

1 INTRODUCTION BY Benedict SENATE BILL NO. 384
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3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE WORKERS' COMPENSATION
5 INSURANCE RATING LAWS; PROVIDING DEFINITIONS; PROVIDING FOR THE DETERMINATION OF A
6 COMPETITIVE WORKERS' COMPENSATION MARKET; REQUIRING THE COMMISSIONER OF INSURANCE
7 TO DESIGNATE AN ADVISORY ORGANIZATION; AUTHORIZING THE FILING AND ADOPTION BY AN
8 INSURER OF AN ADVISORY ORGANIZATION'S PROSPECTIVE LOSS COSTS; AUTHORIZING AN INSURER
9 TO FILE ITS OWN RATES AND SUPPLEMENTARY RATE INFORMATION; PROVIDING FOR RATE REVIEW;
10 ELIMINATING THE REQUIREMENT THAT A RATING ORGANIZATION FILE WORKERS' COMPENSATION
11 RATES; AMENDING SECTIONS 33-16-303, 33-16-1002, 33-16-1011, 33-16-1012, 39-71-435,
12 39-71-2204, 39-71-2205, 39-71-2211, AND 39-71-2316, MCA; REPEALING SECTIONS 33-16-1004 AND
13 33-16-1005, MCA; AND PROVIDING AN APPLICABILITY DATE."

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16
17 NEW SECTION. Section 1. Definitions. As used in this part, the following definitions apply:

18 (1) "Accepted actuarial standards" means the standards adopted by the casualty actuarial society
19 in its Statement of Principles Regarding Property and Casualty Insurance Ratemaking and the Standards of
20 Practice adopted by the actuarial standards board.

21 (2) "Advisory organization" means a person or organization that either has two or more member
22 insurers or is controlled either directly or indirectly by two or more insurers and that assists insurers in
23 ratemaking-related activities. The term does not include a joint underwriting association, any actuarial or
24 legal consultant, or any employee of an insurer or insurers under common control or management or their
25 employees or manager. As used in this subsection, two or more insurers who have a common ownership
26 or operate in this state under common management or control constitute a single insurer.

27 (3) "Classification system" means the plan, system, or arrangement for recognizing differences in
28 exposure to hazards among industries, occupations, or operations of insurance policyholders.

29 (4) "Contingencies" means provisions in rates to recognize the uncertainty of the estimates of
30 losses, loss adjustment expenses, other operating expenses, and investment income and profit that

1 comprise those rates. The provisions may be explicit, including but not limited to a specific charge to
2 reflect systematic variations of estimated costs from expected costs, or implicit, including but not limited
3 to a consideration in selecting a single estimate from a reasonable range of estimates, or both.

4 (5) "Developed losses" means adjusted losses, including loss adjustment expenses, using accepted
5 actuarial standards to eliminate the effect of differences between current payment or reserve estimates and
6 those needed to provide actual ultimate loss payments, including loss adjustment expense payments.

7 (6) "Expenses" means the portion of a rate that is attributable to acquisition, filed supervision and
8 collection expenses, general expenses and taxes, licenses, or fees.

9 (7) "Experience rating" means a rating procedure using past insurance experience of the individual
10 policyholder to forecast future losses by measuring the policyholder's loss experience against the loss
11 experience of policyholders in the same classification to produce a prospective premium credit, debit, or
12 unity modification.

13 (8) "Insurer" means a person licensed to write workers' compensation insurance as a plan No. 2
14 insurer under the laws of the state.

15 (9) "Loss trending" means a procedure for projecting developed losses to the average date of loss
16 for the period during which the policies are to be effective, including loss ratio trending.

17 (10) "Market" means the interaction in this state between buyers and plan No. 2 sellers of workers'
18 compensation and employer's liability insurance pursuant to the provisions of this part.

19 (11) (a) "Prospective loss costs" means historical aggregate losses and loss adjustment expenses,
20 including all assessments that are loss-based, projected through development to their ultimate value and
21 through trending to a future point in time and ascertained by accepted actuarial standards.

22 (b) The term does not include provisions for profit or expenses other than loss adjustment expenses
23 and assessments that are loss-based.

24 (12) "Pure premium rate" means the portion of the rate that represents the loss cost per unit of
25 exposure, including loss adjustment expense.

26 (13) (a) "Rate" or "rates" means rate of premium, policy and membership fee, or any other charge
27 made by an insurer for or in connection with a contract or policy of workers' compensation and employer's
28 liability insurance, prior to application of individual risk variations based on loss or expense considerations.

29 (b) The term does not include minimum premiums.

30 (14) "Reserve estimates" means provisions for insurer obligations for future payments of loss or

1 loss adjustment expenses.

2 (15) "Statistical plan" means the plan, system, or arrangement that is used in collecting data.

3 (16) "Supplementary rate information" means a manual or plan of rates, statistical plan,
4 classification system, minimum premium, policy fee, rating rule, rate-related underwriting rule, and any
5 other information needed to determine the applicable premium for an individual insured that is consistent
6 with the purposes of this part and with rules prescribed by rule of the commissioner.

7 (17) "Supporting information" means the experience and judgment of the filer and the experience
8 or data of other insurers or advisory organizations relied on by the filer, the interpretation of any statistical
9 data relied on by the filer, descriptions of methods used in making the rates, and any other similar
10 information required to be filed by the commissioner.

11

12 **NEW SECTION. Section 2. Competitive market -- hearing.** (1) A competitive market is presumed
13 to exist unless the commissioner, after hearing, issues an order stating that a reasonable degree of
14 competition does not exist in the market. The order may not expire later than 1 year after issuance.

15 (2) In determining whether a reasonable degree of competition exists, the commissioner shall
16 consider the following factors:

17 (a) the number of insurers actively engaged in providing coverage;

18 (b) market shares and changes in market shares;

19 (c) ease of entry into the market;

20 (d) market concentration among plan No. 2 insurers as measured by the Herfindahl-Hirschman
21 index;

22 (e) whether long-term profitability for insurers in the market is unreasonably high in relation to the
23 risks being insured;

24 (f) whether long-term profitability for insurers in the market is reasonable in relation to industries
25 of comparable business risks; and

26 (g) generally accepted and relevant tests relating to competitive market structure, market
27 performance, and market conduct.

28 (2) The workers' compensation insurance market may not be determined to be noncompetitive if
29 the market concentration of the 50 largest insurers writing workers' compensation insurance under plan
30 No. 2 satisfied the U.S. department of justice merger guidelines for an unconcentrated market.

1 (3) The commissioner's determinations must be made on the basis of findings of fact and
2 conclusions of law.

3
4 **NEW SECTION. Section 3. Ratemaking standards -- review by commissioner.** (1) Rates may not
5 be excessive, inadequate, or unfairly discriminatory.

6 (2) Rates in a competitive market are not excessive. Rates in a noncompetitive market are
7 excessive if they are likely to produce a long-run profit that is unreasonably high in relation to services
8 rendered.

9 (3) A rate may not be determined to be inadequate unless:

10 (a) it is clearly insufficient to sustain projected losses and expenses; and

11 (b) the rate is unreasonably low and the use of the rate by the insurer has had or, if continued, will
12 tend to create a monopoly in the market; or

13 (c) funds equal to the full, ultimate cost of anticipated losses and loss adjustment expenses are not
14 produced when prospective loss costs are applied to anticipated payrolls.

15 (4) Unfair discrimination exists if, after allowing for practical limitations, price differentials fail to
16 reflect equitably the differences in expected losses and expenses. A rate is not unfairly discriminatory
17 because different premiums result for policyholders with different loss exposures or expense levels.

18 (5) In determining whether rates comply with standards under subsection (1), consideration must
19 be given to:

20 (a) past and prospective loss experience within and outside Montana, in accordance with accepted
21 actuarial principles;

22 (b) catastrophe hazards and contingencies;

23 (c) past and prospective expenses within and outside Montana;

24 (d) loadings for leveling premium rates over time for dividends, savings, or unabsorbed premium
25 deposits allowed or returned by insurers to their policyholders, members, or subscribers;

26 (e) a reasonable margin for underwriting profit; and

27 (f) all other relevant factors within and outside Montana.

28 (6) The systems of expense provisions included in the rates for use by an insurer or group of
29 insurers may differ from those of any other insurer or group of insurers to reflect the requirements of the
30 operating methods of the insurer or group insurers.

1 (7) The rate may contain provisions of contingencies and an allowance permitting a reasonable
2 profit. In determining the reasonableness of a profit, consideration must be given to all investment income
3 attributable to premiums and the reserves associated with those premiums.

4 (8) The commissioner may investigate and determine whether rates in Montana are excessive,
5 inadequate, or unfairly discriminatory. In any investigation and determination, the commissioner shall also
6 consider the factors specified in [section 2].
7

8 **NEW SECTION. Section 4. Dividends -- no regulation or prohibition.** (1) An advisory organization
9 may not adopt a rule that would regulate or prohibit the payment of dividends, savings, or unabsorbed
10 premium deposits allowed or returned by insurers to their policyholders, members, or subscribers.

11 (2) A plan for the payment of dividends, savings, or unabsorbed premium deposits allowed or
12 returned by insurers to their policyholders, members, or subscribers is not a rating plan or system.

13 (3) It is an unfair trade practice under 33-18-1003 to make the payment of a dividend or any
14 portion of it conditioned upon renewal of the policy or contract.
15

16 **NEW SECTION. Section 5. Membership in advisory organization.** (1) The commissioner shall
17 designate one workers' compensation advisory organization to assist the commissioner in gathering,
18 compiling, and reporting relevant statistical information. Each plan No. 2 and plan No. 3 workers'
19 compensation insurer shall record and report its workers' compensation experience to the advisory
20 organization as set forth in the uniform statistical plan approved by the commissioner.

21 (2) Each plan No. 2 and plan No. 3 workers' compensation insurer must be a member or subscriber
22 of the workers' compensation advisory organization. Each workers' compensation insurer may adhere to
23 the policy forms filed by the advisory organization.

24 (3) Each plan No. 2 and plan No. 3 workers' compensation insurer shall adhere to a uniform
25 classification system and uniform experience rating plan that has been filed by the advisory organization
26 with the commissioner and approved by the commissioner, subject to deviations from the uniform
27 classification system and experience rating plan that a plan No. 3 insurer adopts pursuant to
28 39-71-2316(5).

29 (4) Each plan No. 2 and plan No. 3 workers' compensation insurer shall use the forms and adhere
30 to the rules that the advisory organization shall develop and file with the commissioner. The forms and

1 rules must be reasonably related to the recording and reporting of data pursuant to the uniform statistical
2 plan, the uniform experience rating plan, and the uniform classification system.

3 (5) The methodology of the experience rating plan required under subsection (3) must be based
4 on:

- 5 (a) reasonable eligibility standards;
- 6 (b) incentives for loss prevention; and
- 7 (c) a premium differential to encourage safety.

8 (6) The advisory organization or an insurer may file rating plans with the commissioner that provide
9 for prospective or retrospective premium adjustment based on an insured's expected or actual loss
10 experience, including but not limited to scheduled rating adjustments, retrospective rating plans, optional
11 deductible plans under 39-71-435, a construction industry premium credit plan under 39-71-2211, or other
12 plans as authorized by statute or approved by the commissioner.

13

14 **NEW SECTION. Section 6. Interchange of rating plan -- data exchange -- cooperative action in**
15 **ratemaking -- violation of part.** (1) Reasonable rules and plans may be adopted by the commissioner for
16 the interchange of data necessary for the application of rating plans.

17 (2) To ensure conformity in administering rate regulatory laws, the commissioner, each insurer, and
18 the advisory organization designated by the commissioner may exchange information and experience data
19 with insurance regulatory officials, insurers, and advisory organizations in other states and may consult with
20 them with respect to ratemaking and the application of rating systems.

21 (3) Cooperation among advisory organizations or among insurers and advisory organizations in
22 ratemaking or in other matters within the scope of this part is authorized, but the filings resulting from the
23 cooperation are subject to all provisions of this part.

24 (4) The commissioner may review the cooperative activities and practices. If, after hearing, any
25 cooperative activity or practice is found to violate the provisions of this part, a written order may be issued
26 specifying that the activity or practice violates the provision of this part and requiring the discontinuance
27 of the activity or practice.

28

29 **NEW SECTION. Section 7. Rate filings.** (1) The workers' compensation advisory organization
30 shall file with the commissioner:

- 1 (a) workers' compensation rates and rating plans that are limited to prospective loss costs;
- 2 (b) each workers' compensation policy form to be used by its members or subscribers;
- 3 (c) the uniform classification plan and rules of the advisory organization;
- 4 (d) the uniform experience rating plan and rules of the advisory organization; and
- 5 (e) any other information that the commissioner requests and is entitled to receive under this part.

6 (2) Each insurer shall file with the commissioner all rates, supplementary rate information, and any
7 changes and amendments made by it for use in this state as required by the commissioner under [section
8 8(2)].

9 (3) An insurer may establish rates and supplementary rate information based upon the factors in
10 [section 3]. An insurer may adopt by reference, with or without deviation, the prospective loss costs filed
11 by the advisory organization or the rates and supplementary rate information filed by another insurer.

12 (4) An insurer may not make or issue a contract or policy of insurance under this part, except in
13 accordance with the filings that are in effect for the insurer as provided in this part.

14 (5) In addition to other prohibitions in this part, an advisory organization may not file rates,
15 supplementary rate information, or supporting information on behalf of an insurer.

16 (6) If each rate in a schedule of workers' compensation rates for specific classifications of risks
17 filed by an insurer is not lower than the prospective loss costs contained in the schedule of workers'
18 compensation rates for those classifications filed by an advisory organization under [section 7(1)], the
19 schedule of rates filed by the insurer is not subject to [section 8(1)] but becomes effective upon filing.

20
21 **NEW SECTION. Section 8. Rate filing review.** (1) The commissioner shall review each insurance
22 filing to ensure compliance with the following guidelines:

23 (a) The effective date of each workers' compensation insurer or advisory organization filing must
24 be the date specified in the filing. The effective date of the filing may not be earlier than 30 days after the
25 date on which the filing is received by the commissioner or the date of receipt of the information furnished
26 in support of the filing, if the supporting information is required by the commissioner.

27 (b) Upon written application of the insurer or advisory organization, the commissioner may
28 authorize a filing that becomes effective before the expiration of the period described in subsection (1)(a).

29 (c) A filing is considered to have met the requirements of this part unless disapproved by the
30 commissioner within the period described in subsection (1)(a) or any extension of the period.

1 (2) Whenever a filing is not accompanied by the information required under this section, the
2 commissioner shall inform the filer of the deficiency within 10 days of the initial filing. The filing is
3 considered made when the required information is furnished or when the filer certifies to the commissioner
4 that the additional information requested by the commissioner is not maintained or cannot be provided.

5
6 **NEW SECTION. Section 9. Improper rates -- hearing.** (1) If the commissioner finds that a rate is
7 not in compliance with [section 3] or that a rate has been set in violation of [section 13], the commissioner
8 shall order that its use be discontinued for any policy issued or renewed after the date of the order, and
9 the order may prospectively provide for premium adjustment of any policy then in force.

10 (2) The order must be issued within 30 days after the close of a hearing, if one is requested by the
11 insurer, or within a reasonable time fixed by the commissioner. The order expires 1 year after its effective
12 date unless rescinded earlier by the commissioner.

13 (3) If the commissioner disapproves a rate under subsection (1), disapproval must take effect not
14 less than 15 days after the commissioner's order and the last previous rate in effect for the insurer must
15 be reimposed for a period of 1 year unless the commissioner approves a rate under the provisions of
16 subsections (5) or (6).

17 (4) A determination made by the commissioner under this section must be in accordance with
18 accepted actuarial standards on the basis of findings of fact and conclusions of law.

19 (5) For a period of 1 year after the effective date of a disapproval order under subsection (1), a rate
20 adopted to replace one disapproved under the order may not be used until it has been filed with the
21 commissioner and approved within 30 days.

22 (6) Whenever an insurer does not have legally effective rates pursuant to subsection (1), the
23 commissioner shall, on the insurer's request, specify interim rates for the insurer that are adequate to
24 protect the interests of all parties. The commissioner may order that a specified portion of the premiums
25 be placed in a special reserve established by the insurer. When new rates become legally effective, the
26 commissioner shall order the reserved funds or any overcharge in the interim rates to be distributed
27 appropriately, except that minimal adjustments may not be required.

28
29 **NEW SECTION. Section 10. Restrictions on certain insurers -- waiting period.** (1) The
30 commissioner may require that a particular insurer file any of its rates and supplementary rate information

1 30 days prior to the effective date of the rates, if the commissioner finds after a hearing that the protection
2 of the interests of the insurer's insureds and the public in this state requires closer supervision of the
3 insurer's rates.

4 (2) Upon written application by an insurer, the commissioner, following review, may authorize a
5 filing, which is effective before the expiration of the period described in subsection (1).

6 (3) The filing must be approved or disapproved during the waiting period and, if not disapproved
7 before the expiration of the waiting period, is considered to have met the requirements of this section.

8 (4) An insurer aggrieved by the commissioner's actions under this section may request a rehearing
9 by the commissioner after the expiration of 12 months from the date of the commissioner's initial order.

10
11 **NEW SECTION. Section 11. Delay of rates in noncompetitive market.** (1) A 30-day waiting period
12 may be implemented or extended under one of the following circumstances:

13 (a) after finding that the market is not competitive under [section 2], the commissioner adopts a
14 rule requiring that any subsequent changes in rates or supplementary information must be filed with the
15 commissioner at least 30 days before the changes become effective;

16 (b) the commissioner extends the waiting period under this section for a period not exceeding 30
17 additional days by written notice to the filer before the first 30-day period expires;

18 (c) upon written application by an insurer or advisory organization, the commissioner, following
19 review, authorizes a filing, which becomes effective before the expiration of the period described in
20 subsection (1)(a) or (1)(b); or

21 (d) the filing is approved or disapproved during the waiting period and, if not disapproved before
22 the expiration of the waiting period, is considered to have met the requirements of this section.

23 (2) If a rule is adopted under subsection (1), the commissioner may require the filing of supporting
24 data as to classes of risks or combinations of risk classes that the commissioner considers necessary for
25 the proper functioning of the rate monitoring and regulating process. The supporting data must include:

26 (a) the experience and judgment of the filer and, to the extent that the filer wishes or the
27 commissioner requires, the experience and judgment of other insurers or the advisory organization;

28 (b) the interpretation of any statistical data upon which the filer relied;

29 (c) a description of the actuarial and statistical methods used in setting the rate; and

30 (d) any other relevant matter required by the commissioner.

1 (3) A rule adopted under this section expires 1 year after adoption unless renewed by the
2 commissioner after hearings and appropriate findings under this section.

3 (4) Whenever a filing is not accompanied by the information that the commissioner has required
4 under subsection (2), the commissioner shall inform the insurer within 10 days of the initial filing. The filing
5 is considered made when the required information is furnished.

6

7 **NEW SECTION. Section 12. Consent to rate.** Notwithstanding any other provision of this part,
8 upon the written consent of the insured, filed with the commissioner, a rate in excess of that determined
9 in accordance with the other provisions of this part may be used on any specific risk.

10

11 **NEW SECTION. Section 13. Acts reducing competition prohibited.** (1) In this section, the word
12 "insurer" includes two or more affiliated insurers engaged in joint or cooperative underwriting, investment
13 management, marketing, servicing, or administration of their business and affairs as insurers and:

14 (a) under common management; or

15 (b) under common controlling ownership or under other common effective legal control.

16 (2) An insurer or advisory organization may not:

17 (a) monopolize or attempt to monopolize or combine or conspire with any other person or persons
18 to monopolize the business of insurance of any kind, subdivision, or class;

19 (b) agree with any other insurer or advisory organization to charge or adhere to any rate or rating
20 plan other than the uniform experience rating plan or rating rules of the advisory organization, except as
21 needed to comply with the requirements of [section 7];

22 (c) make an agreement with any other insurer, advisory organization, or other person to
23 unreasonably restrain trade or substantially lessen competition in the business of insurance of any kind,
24 subdivision, or class; or

25 (d) make an agreement with any other insurer or advisory organization to refuse to deal with any
26 person in connection with the sale of insurance.

27 (3) The fact that two or more insurers, whether they are members or subscribers of a common
28 advisory organization, use consistently or intermittently the same advisory organization rules or insurer
29 guidelines, rating plans, rating schedules, rating rules, policy forms, rate classifications, underwriting rules,
30 surveys, or inspections or similar materials is not sufficient in itself to support a finding that an agreement

1 exists.

2 (4) An advisory organization or member or subscriber of an advisory organization may not interfere
3 with the right of any insurer to establish its rates independently of that advisory organization or to charge
4 rates different from the rates made by that advisory organization.

5 (5) Except as required by [section 7], an advisory organization may not have or adopt any rule or
6 exact any agreement or formulate or engage in any program that would require any member, subscriber,
7 or other insurer to:

8 (a) adhere to its rates; or

9 (b) prevent any insurer from acting independently.

10

11 **NEW SECTION. Section 14. Advisory organization -- permitted activity.** An advisory organization
12 may:

13 (1) develop statistical plans, including class definitions;

14 (2) collect statistical data from members, subscribers, or any other source;

15 (3) prepare and distribute pure premium rate data, adjusted for loss development and loss trending,
16 in accordance with its statistical plan. The data and adjustments must be in sufficient detail to permit
17 insurers to modify pure premiums based upon their own rating methods or interpretations of underlying
18 data.

19 (4) prepare and distribute manuals for rating rules and rating schedules that do not contain any
20 rules or schedules, including final rates, without information outside the manuals;

21 (5) distribute information that is filed with the commissioner and open to public inspection;

22 (6) conduct research and collect statistics in order to discover, identify, and classify information
23 relating to causes or prevention of losses;

24 (7) prepare and file policy forms and endorsements and consult with members, subscribers, and
25 others relative to their use and application;

26 (8) collect, compile, and distribute past and current prices of individual insurers, if the information
27 is made available to the general public;

28 (9) conduct research and collect information to determine the impact of benefit level changes on
29 pure premium rates;

30 (10) prepare and distribute rules and rating values for the uniform experience rating plan; and

1 (11) calculate and disseminate individual risk premium modification factors.

2

3 **NEW SECTION. Section 15. Advisory organization -- prohibited activity.** In addition to other
4 prohibitions in this part, except as specifically permitted under [section 14], an advisory organization may
5 not compile or distribute recommendations relating to rates that include expenses, other than loss
6 adjustment expenses, or profit.

7

8 **NEW SECTION. Section 16. Penalties -- suspension of license.** (1) The commissioner may impose
9 upon a person or organization that violates [sections 1 through 17] a penalty of not more than \$500 for
10 each violation.

11 (2) If the commissioner determines that the violation is willful, the commissioner may impose a
12 penalty of not more than \$1,000 for each violation in addition to any other penalty provided by law.

13 (3) The commissioner may suspend the license of an advisory insurer or organization that fails to
14 comply with any order within the time set by the order or extension granted by the commissioner. The
15 commissioner may not suspend a license for failure to comply with an order until the time prescribed for
16 appeal from the order has expired or, if appealed, until the order has been affirmed. The commissioner may
17 determine the period of a suspension, which remains in effect for the period unless modified or rescinded
18 or until the order upon which the suspension is based is modified, rescinded, or reversed.

19 (4) Unless a consent decree has been entered, a penalty may not be imposed nor may a license
20 be suspended or revoked unless the commissioner, following a hearing, issues a written order with findings
21 of fact. The hearing must be held at least 10 days after written notice to the person or organization
22 specifying the alleged violation.

23 (5) A party aggrieved by an order or decision of the commissioner may, within 30 days after
24 receiving the commissioner's notice, make a written request for a hearing.

25

26 **NEW SECTION. Section 17. Appeals from commissioner.** (1) An order, decision, or act of the
27 commissioner under this part may be appealed to district court upon petition of a person aggrieved.

28 (2) A petition for review must be filed within 60 days from notice of the order, decision, or act.
29 The commencement of the proceeding does not affect enforcement or validity of the commissioner's action
30 unless the court determines, after notice to the commissioner, that a stay of enforcement until further

1 direction of the court will not injure the interests of the public.

2

3 **Section 18.** Section 33-16-303, MCA, is amended to read:

4 **"33-16-303. Use of rates, rating systems, underwriting rules, and policy or bond forms of rating**
 5 **or advisory organizations -- agreements to adhere to.** (1) Members and subscribers of rating or advisory
 6 organizations may use the rates, rating systems, underwriting rules, or policy or bond forms of ~~such~~ those
 7 organizations, either consistently or intermittently, but, except as provided in 33-16-105, 33-16-302,
 8 33-16-305, 33-16-307, and ~~33-16-1005~~ shall [sections 1 through 17], may not agree with each other or
 9 rating organizations or others to adhere ~~thereto~~ to the organizations' rates, systems, rules, policy, or bond
 10 forms.

11 (2) The fact that two or more admitted insurers, whether or not members or subscribers of a rating
 12 or advisory organization, use, either consistently or intermittently, the rates or rating systems made or
 13 adopted by a rating organization or the underwriting rules or policy or bond forms prepared by a rating or
 14 advisory organization ~~shall~~ is not be sufficient in itself to support a finding that an agreement ~~to so adhere~~
 15 prohibited under subsection (1) exists and may be used only for the purpose of supplementing or explaining
 16 direct evidence of the existence of any ~~such~~ agreement."

17

18 **Section 19.** Section 33-16-1002, MCA, is amended to read:

19 **"33-16-1002. Applicability of part.** This part, together and in conjunction with parts 1 through 4
 20 of this chapter, applies to the making of premium rates for workers' compensation insurance issued under
 21 compensation plan No. 2 of the Workers' Compensation Act, Title 39, chapter 71, part 22, or related
 22 employer's liability insurance, but does not apply to reinsurance."

23

24 **Section 20.** Section 33-16-1011, MCA, is amended to read:

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

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

28 (a) two representatives of private insurance carriers writing workers' compensation insurance in
 29 Montana. The members must be appointed by the Montana commissioner of insurance.

30 (b) one licensed independent insurance producer who resides in Montana, appointed by the

1 commissioner of insurance;

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

4 (d) one representative of an employer who is insured by either a private insurance carrier or the
5 state compensation insurance fund, appointed by the commissioner of insurance.

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

9 (4) Before appointments are to be made by the commissioner of insurance under subsections (2)(a),
10 (2)(b), and (2)(d), established private organizations representing insurance carriers, independent insurance
11 producers, and employers may submit names of individuals they recommend for appointments. The
12 commissioner of insurance shall give consideration to the names submitted before appointments are made.
13 However, the commissioner of insurance is not required to appoint any person from the names submitted.

14 (5) The committee must be staffed by the ~~rating advisory~~ organization designated under [section
15 5] and be funded from the operations budget of the ~~rating advisory~~ organization. Committee members may,
16 if they request, be paid their actual and necessary travel expenses.

17 (6) Documents and other information concerning the committee's actions must be made available
18 for public review in the office of the commissioner of insurance."

19

20 **Section 21.** Section 33-16-1012, MCA, is amended to read:

21 **"33-16-1012. Functions and powers of classification and rating committee -- hearings --**

22 **rulemaking.** (1) The classification and rating committee shall:

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

24 (b) make the final determination regarding the establishment of all classifications;

25 ~~(c) establish the advisory premium rates as provided for in 33-16-1005;~~

26 ~~(d)~~(c) publish material and pamphlets as it considers appropriate;

27 ~~(e)~~(d) act as a review committee concerning objections filed by employers in relation to
28 classifications assigned to the employer by an insurer; and

29 ~~(f)~~(e) make rules as may be necessary for the conduct of any business that is subject to notice and
30 hearings. The rules must be published and adopted as provided in Title 2, chapter 4, part 3, and must be

1 published in the Administrative Rules of Montana as part of the rules promulgated by the commissioner of
2 insurance.

3 (2) (a) A hearing conducted by the committee pursuant to subsection ~~(1)(e)~~ (1)(d) must be an
4 informal proceeding as provided in 2-4-604.

5 (b) A party aggrieved by a decision of the committee rendered after a hearing conducted pursuant
6 to subsection (2)(a) may petition for judicial review of the decision pursuant to Title 2, chapter 4, part 7.

7 (3) The committee is subject to the provisions of Title 2, chapter 3, parts 1 and 2."
8

9 **Section 22.** Section 39-71-435, MCA, is amended to read:

10 **"39-71-435. Workers' compensation and employers' liability insurance -- optional deductibles.** (1)
11 An insurer issuing a workers' compensation or an employer's liability insurance policy may offer to the
12 policyholder, as part of the policy or by endorsement, optional deductibles for benefits payable under the
13 policy consistent with the standards contained in subsection (3).

14 (2) ~~A rating~~ The advisory organization designated under [section 5] may develop and file a
15 deductible plan or plans on behalf of its members consistent with the standards contained in subsection
16 (3).

17 (3) The commissioner of insurance shall approve a deductible plan that is in accordance with the
18 following standards:

19 (a) Claimants' rights are properly protected and claimants' benefits are paid without regard to the
20 deductible.

21 (b) Premium reductions reflect the type and level of the deductible, consistent with accepted
22 actuarial standards.

23 (c) Premium reductions for deductibles are determined before application of any experience
24 modification, premium surcharge, or premium discount.

25 (d) Recognition is given to policyholder characteristics, including but not limited to size, financial
26 capabilities, nature of activities, and number of employees.

27 (e) The policyholder is liable to the insurer for the deductible amount in regard to benefits paid for
28 compensable claims.

29 (f) The insurer pays all of the deductible amount applicable to a compensable claim to the person
30 or provider entitled to benefits and then seeks reimbursement from the policyholder for the applicable

1 deductible amount.

2 (g) Failure by the policyholder to reimburse deductible amounts to the insurer is treated under the
3 policy as nonpayment of premium.

4 (h) Losses subject to the deductible must be reported and recorded as losses for purposes of
5 calculating rates for a policyholder on the same basis as losses under policies providing first dollar coverage.

6 (4) The state compensation insurance fund, plan No. 3, may adopt the plan filed by the ~~rating~~
7 advisory organization or adopt an optional deductible plan that meets the requirements of this section.

8 (5) For purposes of 39-71-201, liability for assessments must be ascertained based on premiums
9 collected, in the case of policies written under plan No. 2, or on the assessment levied, in the case of
10 policies written under plan No. 3, for which the policyholder would have been obligated without the
11 deductible. For all other taxes and assessments based on premium, the amount of premium or assessment
12 must be determined after application of the deductible."
13

14 **Section 23.** Section 39-71-2204, MCA, is amended to read:

15 **"39-71-2204. Insurer to submit notice of coverage within thirty days -- penalty for failure.** (1) The
16 insurer shall, within 30 days after the issuance of the policy of workers' compensation insurance, submit
17 to the department the notice of coverage stating the effective date of the policy insuring the employer and
18 ~~such~~ other information ~~as that~~ may be required by the department.

19 (2) The department may:

20 (a) recognize the ~~national council on compensation insurance~~ advisory organization designated
21 under [section 5] as an agent for authorized workers' compensation insurers in Montana; and

22 (b) under terms and conditions acceptable to the department, accept notice of coverage received
23 from ~~the national council on compensation insurance~~ the advisory organization designated under [section
24 5] as the insurer's notice of coverage.

25 (3) The department may, in its discretion, assess a penalty of no more than \$200 against an insurer
26 that as a general business practice does not comply with the 30-day notice requirement set forth in
27 subsection (1)."
28

29 **Section 24.** Section 39-71-2205, MCA, is amended to read:

30 **"39-71-2205. Policy in effect until canceled or replaced -- twenty-day notification of cancellation**

1 **required -- penalty.** (1) The policy remains in effect until canceled, and cancellation may take effect only
 2 by written notice to the named insured and to the department at least 20 days prior to the date of
 3 cancellation. However, the policy terminates on the effective date of a replacement or succeeding workers'
 4 compensation insurance policy issued to the insured. Nothing in this section prevents an insurer from
 5 canceling a policy of workers' compensation insurance before a replacement policy is issued to the insured.

6 (2) The department may:

7 (a) recognize ~~the national council on compensation insurance~~ the advisory organization designated
 8 under [section 5] as an agent for authorized workers' compensation insurers in Montana; and

9 (b) under terms and conditions acceptable to the department, accept notice of cancellation received
 10 from ~~the national council on compensation insurance~~ the advisory organization as the insurer's notice of
 11 cancellation.

12 (3) (a) The department may assess a penalty of up to \$200 against an insurer that does not comply
 13 with the notice requirement in subsection (1).

14 (b) An insurer may contest the penalty assessment in a hearing conducted according to department
 15 rules."

16
 17 **Section 25.** Section 39-71-2211, MCA, is amended to read:

18 **"39-71-2211. Premium rates for construction industry -- filing required.** (1) With respect to each
 19 classification of risk in the construction industry under plan No. 2, the ~~rating organization described in~~
 20 ~~33-16-1005~~ advisory organization designated under [section 5] shall file with the commissioner of insurance
 21 a method of computing premiums that does not impose a higher insurance premium solely because of an
 22 employer's higher rate of wages paid.

23 (2) The commissioner shall accept a filing under subsection (1) that includes a reasonable method
 24 of recognizing differences in rates of pay. This method must use a credit scale with the starting point set
 25 at one and one-half times the Montana average weekly wage as reported by the department.

26 (3) The ~~rating~~ advisory organization shall file a revenue neutral plan for new and renewed policies
 27 ~~by July 1, 1992,~~ for prompt and orderly transition to a method of computing premiums that is in compliance
 28 with the requirements of this section.

29 (4) The state compensation insurance fund, plan No. 3, shall adopt the plan filed by the ~~rating~~
 30 advisory organization or adopt a credit scale plan that meets the requirements of this section."

1 **Section 26.** Section 39-71-2316, MCA, is amended to read:

2 **"39-71-2316. Powers of the state fund.** For the purposes of carrying out its functions, the state
3 fund may:

4 (1) insure any employer for workers' compensation and occupational disease liability as the
5 coverage is required by the laws of this state. The state fund may charge a minimum yearly premium to
6 cover its administrative costs for coverage of a small employer.

7 (2) sue and be sued;

8 (3) except as provided in section 21, Chapter 4, Special Laws of May 1990, enter into contracts
9 relating to the administration of the state fund, including claims management, servicing, and payment;

10 (4) collect and disburse money received;

11 (5) adopt classifications and charge premiums for the classifications so that the state fund will be
12 neither more nor less than self-supporting. Premium rates for classifications may only be adopted and
13 changed using a process, a procedure, formulas, and factors set forth in rules adopted under Title 2,
14 chapter 4, parts 2 through 4. After ~~such~~ the rules have been adopted, the state fund need not follow the
15 rulemaking provisions of Title 2, chapter 4, when changing classifications and premium rates. The
16 contested case rights and provisions of Title 2, chapter 4, do not apply to an employer's classification or
17 premium rate. The state fund ~~must~~ is required to belong to ~~the national council on compensation insurance~~
18 the advisory organization designated by the commissioner of insurance under [section 5] and shall may use
19 ~~the classifications of employment uniform classification system and experience rating plan~~ adopted by the
20 ~~national council and corresponding rates~~ advisory organization as a basis for setting its own rates.

21 (6) pay the amounts determined due under a policy of insurance issued by the state fund;

22 (7) hire personnel;

23 (8) declare dividends if there is an excess of assets over liabilities. However, dividends may not
24 be paid until adequate actuarially determined reserves are set aside. If those reserves have been set aside,
25 money that can be declared as a dividend must be transferred to the account created by 39-71-2321 for
26 claims for injuries resulting from accidents that occurred before July 1, 1990, and used for the purposes
27 of that account. After all claims funded by that account have been paid, dividends may be declared and
28 paid to insureds.

29 (9) perform all functions and exercise all powers of a private insurance carrier that are necessary,
30 appropriate, or convenient for the administration of the state fund."

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0384, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act generally revising the workers' compensation insurance rating laws; providing definitions; providing for the determination of a competitive workers' compensation market; requiring the commissioner of insurance to designate an advisory organization.

ASSUMPTIONS:

1. The commissioner will adopt 30 pages of rules and conduct the required rules hearings at a cost of \$3,550 in FY96 only.
2. The advisory council members will continue to pay their own travel expenses and staff support will continue to be provided by a non-state entity. No staff support or travel expenses will be required for advisory board meetings.
3. The commissioner will be required to conduct actuarial reviews of policy forms and rate filings. These include supplementary rate information and charges and amendments made for use in this state. The expenses of performing these duties can be absorbed by the current budget, assuming that the Governor's Executive Budget, as submitted, is the basis for determining changes in fiscal notes.
4. State Fund personnel would analyze differences between classification codes used by the State Fund and the advisory organization, and present the differences to the board of directors to obtain approval to deviate from advisory organization classification. The estimated cost to identify differences in approximately 400 class codes used by the State Fund would be \$8,000 in FY96 only.

FISCAL IMPACT:

Expenditures:

	<u>FY96</u>	<u>FY97</u>
	<u>Difference</u>	<u>Difference</u>
State Auditor:		
Operating expenses	3,550	0
State Fund:		
Operating expenses	8,000	0
<u>Funding:</u>		
General fund (01)	3,550	0
Proprietary fund (06)	<u>8,000</u>	<u>0</u>
Total	11,550	0

TECHNICAL NOTES:

Language in this bill and SB374 conflict in terms of membership in a rating organization and provision of individual policyholder information to others by the advisory organization.

Dave Lewis 2-19-95
 DAVE LEWIS, BUDGET DIRECTOR DATE
 Office of Budget and Program Planning

Steve Benedict 2-20-95
 STEVE BENEDICT, PRIMARY SPONSOR DATE

Fiscal Note for SB0384, as introduced

SB 384

1 SENATE BILL NO. 384

2 INTRODUCED BY BENEDICT

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE WORKERS' COMPENSATION
5 INSURANCE RATING LAWS; PROVIDING DEFINITIONS; PROVIDING FOR THE DETERMINATION OF A
6 COMPETITIVE WORKERS' COMPENSATION MARKET; REQUIRING THE COMMISSIONER OF INSURANCE
7 TO DESIGNATE AN ADVISORY ORGANIZATION; AUTHORIZING THE FILING AND ADOPTION BY AN
8 INSURER OF AN ADVISORY ORGANIZATION'S PROSPECTIVE LOSS COSTS; AUTHORIZING AN INSURER
9 TO FILE ITS OWN RATES AND SUPPLEMENTARY RATE INFORMATION; PROVIDING FOR RATE REVIEW;
10 ELIMINATING THE REQUIREMENT THAT A RATING ORGANIZATION FILE WORKERS' COMPENSATION
11 RATES; AMENDING SECTIONS 33-16-303, 33-16-403, 33-16-1002, 33-16-1011, 33-16-1012, 39-71-435,
12 39-71-2204, 39-71-2205, 39-71-2211, AND 39-71-2316, MCA; REPEALING SECTIONS 33-16-1004 AND
13 33-16-1005, MCA; AND PROVIDING AN APPLICABILITY DATE."

14

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

16

17 NEW SECTION. **Section 1. Definitions.** As used in this part, the following definitions apply:

18 (1) "Accepted actuarial standards" means the standards adopted by the casualty actuarial society
19 in its Statement of Principles Regarding Property and Casualty Insurance Ratemaking and the Standards of
20 Practice adopted by the actuarial standards board.

21 (2) "Advisory organization" means a person or organization that either has two or more member
22 insurers or is controlled either directly or indirectly by two or more insurers and that assists insurers in
23 ratemaking-related activities. The term does not include a joint underwriting association, any actuarial or
24 legal consultant, or any employee of an insurer or insurers under common control or management or their
25 employees or manager. As used in this subsection, two or more insurers who have a common ownership
26 or operate in this state under common management or control constitute a single insurer.

27 (3) "Classification system" means the plan, system, or arrangement for recognizing differences in
28 exposure to hazards among industries, occupations, or operations of insurance policyholders.

29 (4) "Contingencies" means provisions in rates to recognize the uncertainty of the estimates of
30 losses, loss adjustment expenses, other operating expenses, and investment income and profit that

1 comprise those rates. The provisions may be explicit, including but not limited to a specific charge to
2 reflect systematic variations of estimated costs from expected costs, or implicit, including but not limited
3 to a consideration in selecting a single estimate from a reasonable range of estimates, or both.

4 (5) "Developed losses" means adjusted losses, including loss adjustment expenses, using accepted
5 actuarial standards to eliminate the effect of differences between current payment or reserve estimates and
6 those needed to provide actual ultimate loss payments, including loss adjustment expense payments.

7 (6) "Expenses" means the portion of a rate that is attributable to acquisition, filed supervision and
8 collection expenses, general expenses and taxes, licenses, or fees.

9 (7) "Experience rating" means a rating procedure using past insurance experience of the individual
10 policyholder to forecast future losses by measuring the policyholder's loss experience against the loss
11 experience of policyholders in the same classification to produce a prospective premium credit, debit, or
12 unity modification.

13 (8) "Insurer" means a person licensed to write workers' compensation insurance as a plan No. 2
14 insurer under the laws of the state.

15 (9) "Loss trending" means a procedure for projecting developed losses to the average date of loss
16 for the period during which the policies are to be effective, including loss ratio trending.

17 (10) "Market" means the interaction in this state between buyers and plan No. 2 sellers of workers'
18 compensation and employer's liability insurance pursuant to the provisions of this part.

19 (11) (a) "Prospective loss costs" means historical aggregate losses and loss adjustment expenses,
20 including all assessments that are loss-based, projected through development to their ultimate value and
21 through trending to a future point in time and ascertained by accepted actuarial standards.

22 (b) The term does not include provisions for profit or expenses other than loss adjustment expenses
23 and assessments that are loss-based.

24 (12) "Pure premium rate" means the portion of the rate that represents the loss cost per unit of
25 exposure, including loss adjustment expense.

26 (13) (a) "Rate" or "rates" means rate of premium, policy and membership fee, or any other charge
27 made by an insurer for or in connection with a contract or policy of workers' compensation and employer's
28 liability insurance, prior to application of individual risk variations based on loss or expense considerations.

29 (b) The term does not include minimum premiums.

30 (14) "Reserve estimates" means provisions for insurer obligations for future payments of loss or

1 loss adjustment expenses.

2 (15) "Statistical plan" means the plan, system, or arrangement that is used in collecting data.

3 (16) "Supplementary rate information" means a manual or plan of rates, statistical plan,
4 classification system, minimum premium, policy fee, rating rule, rate-related underwriting rule, and any
5 other information needed to determine the applicable premium for an individual insured that is consistent
6 with the purposes of this part and with rules prescribed by rule of the commissioner.

7 (17) "Supporting information" means the experience and judgment of the filer and the experience
8 or data of other insurers or advisory organizations relied on by the filer, the interpretation of any statistical
9 data relied on by the filer, descriptions of methods used in making the rates, and any other similar
10 information required to be filed by the commissioner.

11

12 **NEW SECTION. Section 2. Competitive market -- hearing.** (1) A competitive market is presumed
13 to exist unless the commissioner, after hearing, issues an order stating that a reasonable degree of
14 competition does not exist in the market. The order may not expire later than 1 year after issuance.

15 (2) In determining whether a reasonable degree of competition exists, the commissioner shall
16 consider the following factors:

17 (a) the number of insurers actively engaged in providing coverage;

18 (b) market shares and changes in market shares;

19 (c) ease of entry into the market;

20 (d) market concentration among plan No. 2 insurers as measured by the Herfindahl-Hirschman
21 index;

22 (e) whether long-term profitability for insurers in the market is unreasonably high in relation to the
23 risks being insured;

24 (f) whether long-term profitability for insurers in the market is reasonable in relation to industries
25 of comparable business risks; and

26 (g) generally accepted and relevant tests relating to competitive market structure, market
27 performance, and market conduct.

28 (2) The workers' compensation insurance market may not be determined to be noncompetitive if
29 the market concentration of the 50 largest insurers writing workers' compensation insurance under plan
30 No. 2 satisfied the U.S. department of justice merger guidelines for an unconcentrated market.

1 (3) The commissioner's determinations must be made on the basis of findings of fact and
2 conclusions of law.

3

4 **NEW SECTION. Section 3. Ratemaking standards -- review by commissioner.** (1) Rates may not
5 be excessive, inadequate, or unfairly discriminatory.

6 (2) Rates in a competitive market are not excessive. Rates in a noncompetitive market are
7 excessive if they are likely to produce a long-run profit that is unreasonably high in relation to services
8 rendered.

9 (3) A rate may not be determined to be inadequate unless:

10 (a) it is clearly insufficient to sustain projected losses and expenses; and

11 (b) the rate is unreasonably low and the use of the rate by the insurer has had or, if continued, will
12 tend to create a monopoly in the market; or

13 (c) funds equal to the full, ultimate cost of anticipated losses and loss adjustment expenses are not
14 produced when prospective loss costs are applied to anticipated payrolls.

15 (4) Unfair discrimination exists if, after allowing for practical limitations, price differentials fail to
16 reflect equitably the differences in expected losses and expenses. A rate is not unfairly discriminatory
17 because different premiums result for policyholders with different loss exposures or expense levels.

18 (5) In determining whether rates comply with standards under subsection (1), consideration must
19 be given to:

20 (a) past and prospective loss experience within and outside Montana, in accordance with accepted
21 actuarial principles;

22 (b) catastrophe hazards and contingencies;

23 (c) past and prospective expenses within and outside Montana;

24 (d) loadings for leveling premium rates over time for dividends, savings, or unabsorbed premium
25 deposits allowed or returned by insurers to their policyholders, members, or subscribers;

26 (e) a reasonable margin for underwriting profit; and

27 (f) all other relevant factors within and outside Montana.

28 (6) The systems of expense provisions included in the rates for use by an insurer or group of
29 insurers may differ from those of any other insurer or group of insurers to reflect the requirements of the
30 operating methods of the insurer or group insurers.

1 (7) The rate may contain provisions of contingencies and an allowance permitting a reasonable
2 profit. In determining the reasonableness of a profit, consideration must be given to all investment income
3 attributable to premiums and the reserves associated with those premiums.

4 (8) The commissioner may investigate and determine whether rates in Montana are excessive,
5 inadequate, or unfairly discriminatory. In any investigation and determination, the commissioner shall also
6 consider the factors specified in [section 2].

7
8 **NEW SECTION. Section 4. Dividends -- no regulation or prohibition.** (1) An advisory organization
9 may not adopt a rule that would regulate or prohibit the payment of dividends, savings, or unabsorbed
10 premium deposits allowed or returned by insurers to their policyholders, members, or subscribers.

11 (2) A plan for the payment of dividends, savings, or unabsorbed premium deposits allowed or
12 returned by insurers to their policyholders, members, or subscribers is not a rating plan or system.

13 (3) It is an unfair trade practice under 33-18-1003 to make the payment of a dividend or any
14 portion of it conditioned upon renewal of the policy or contract.

15
16 **NEW SECTION. Section 5. Membership in advisory organization.** (1) The commissioner shall
17 designate one workers' compensation advisory organization to assist the commissioner in gathering,
18 compiling, and reporting relevant statistical information. Each ~~plan No. 2 and plan No. 3~~ workers'
19 compensation insurer shall record and report its workers' compensation experience to the DESIGNATED
20 advisory organization as set forth in the uniform statistical plan approved by the commissioner.

21 (2) Each ~~plan No. 2 and plan No. 3~~ workers' compensation insurer must be a member or subscriber
22 of the DESIGNATED workers' compensation advisory organization. Each workers' compensation insurer
23 may adhere to the policy forms filed by the advisory organization.

24 (3) Each ~~plan No. 2 and plan No. 3~~ workers' compensation insurer shall adhere to a uniform
25 classification system and uniform experience rating plan that has been filed by the DESIGNATED advisory
26 organization with the commissioner and approved by the commissioner, ~~subject to deviations from the~~
27 ~~uniform classification system and experience rating plan that a plan No. 3 insurer adopts pursuant to~~
28 ~~39-71-2316(5).~~

29 (4) Each ~~plan No. 2 and plan No. 3~~ workers' compensation insurer shall use the forms and adhere
30 to the rules that the DESIGNATED advisory organization shall develop and file with the commissioner. The

1 forms and rules must be reasonably related to the recording and reporting of data pursuant to the uniform
2 statistical plan, the uniform experience rating plan, and the uniform classification system.

3 (5) The methodology of the experience rating plan required under subsection (3) must be based
4 on:

- 5 (a) reasonable eligibility standards;
- 6 (b) incentives for loss prevention; and
- 7 (c) a premium differential to encourage safety.

8 (6) The DESIGNATED advisory organization or an insurer may file rating plans with the
9 commissioner that provide for prospective or retrospective premium adjustment based on an insured's
10 expected or actual loss experience, including but not limited to scheduled rating adjustments, retrospective
11 rating plans, optional deductible plans under 39-71-435, a construction industry premium credit plan under
12 39-71-2211, or other plans as authorized by statute or approved by the commissioner.

13
14 NEW SECTION. SECTION 6. PLAN NO. 3 MEMBERSHIP IN LICENSED WORKERS'
15 COMPENSATION ADVISORY ORGANIZATION -- REPORTING REQUIREMENTS. (1) THE PLAN NO. 3
16 INSURER UNDER TITLE 39, CHAPTER 71, PART 23, IS REQUIRED TO BE A MEMBER OF A LICENSED
17 WORKERS' COMPENSATION ADVISORY ORGANIZATION OR A LICENSED WORKERS' COMPENSATION
18 RATING ORGANIZATION UNDER TITLE 33, CHAPTER 16, PART 4.

19 (2) IF THE PLAN NO. 3 INSURER IS NOT A MEMBER OF THE WORKERS' COMPENSATION
20 ADVISORY ORGANIZATION DESIGNATED UNDER [SECTION 5], THEN, SUBJECT TO THE DEVIATIONS
21 FROM THE UNIFORM STATISTICAL PLAN, UNIFORM CLASSIFICATION SYSTEM, AND UNIFORM
22 EXPERIENCE RATING PLANS THAT MAY BE APPROVED BY THE BOARD OF DIRECTORS OF THE PLAN
23 NO. 3 INSURER AS PROVIDED IN 39-71-2316(5), THE INSURER SHALL:

24 (A) RECORD AND REPORT ITS WORKERS' COMPENSATION EXPERIENCE TO THE DESIGNATED
25 ADVISORY ORGANIZATION AS REQUIRED IN THE UNIFORM STATISTICAL PLAN OF THE DESIGNATED
26 WORKERS' COMPENSATION ADVISORY ORGANIZATION APPROVED BY THE COMMISSIONER, THE
27 UNIFORM CLASSIFICATION SYSTEM, AND THE UNIFORM EXPERIENCE RATING PLAN THAT HAVE BEEN
28 FILED BY THE DESIGNATED ADVISORY ORGANIZATION WITH AND APPROVED BY THE COMMISSIONER;
29 AND

30 (B) USE THE FORMS AND ADHERE TO THE RULES THAT THE DESIGNATED ADVISORY

1 ORGANIZATION DEVELOPS AND FILES WITH THE COMMISSIONER UNDER [SECTION 5].

2
3 NEW SECTION. Section 7. Interchange of rating plan -- data exchange -- cooperative action in
4 ratemaking -- violation of part. (1) Reasonable rules and plans may be adopted by the commissioner for
5 the interchange of data necessary for the application of rating plans.

6 (2) To ensure conformity in administering rate regulatory laws, the commissioner, each insurer, and
7 the advisory organization designated by the commissioner may exchange information and experience data
8 with insurance regulatory officials, insurers, and advisory organizations in other states and may consult with
9 them with respect to ratemaking and the application of rating systems.

10 (3) Cooperation among advisory organizations or among insurers and advisory organizations in
11 ratemaking or in other matters within the scope of this part is authorized, but the filings resulting from the
12 cooperation are subject to all provisions of this part.

13 (4) The commissioner may review the cooperative activities and practices. If, after hearing, any
14 cooperative activity or practice is found to violate the provisions of this part, a written order may be issued
15 specifying that the activity or practice violates the provision of this part and requiring the discontinuance
16 of the activity or practice.

17
18 NEW SECTION. Section 8. Rate filings. (1) ~~The~~ A workers' compensation advisory organization
19 shall file with the commissioner:

20 (a) workers' compensation rates and rating plans that are limited to prospective loss costs;

21 (b) each workers' compensation policy form to be used by its members or subscribers;

22 (c) the uniform classification plan and rules of the advisory organization;

23 (d) the uniform experience rating plan and rules of the advisory organization; and

24 (e) any other information that the commissioner requests and is entitled to receive under this part.

25 (2) Each insurer shall file with the commissioner all rates, supplementary rate information, and any
26 changes and amendments made by it for use in this state as required by the commissioner under [section
27 ~~8(2)~~ 9(2)].

28 (3) An insurer may establish rates and supplementary rate information based upon the factors in
29 [section 3]. An insurer may adopt by reference, with or without deviation, the prospective loss costs filed
30 by the advisory organization DESIGNATED UNDER [SECTION 5] or the rates and supplementary rate

1 information filed by another insurer.

2 (4) An insurer may not make or issue a contract or policy of insurance under this part, except in
3 accordance with the filings that are in effect for the insurer as provided in this part.

4 (5) In addition to other prohibitions in this part, an advisory organization may not file rates,
5 supplementary rate information, or supporting information on behalf of an insurer.

6 (6) If each rate in a schedule of workers' compensation rates for specific classifications of risks
7 filed by an insurer is not lower than the prospective loss costs contained in the schedule of workers'
8 compensation rates for those classifications filed by ~~an~~ THE DESIGNATED advisory organization under
9 [section ~~7(1)~~ 8(1)], the schedule of rates filed by the insurer is not subject to [section ~~8(1)~~ 9(1)] but
10 becomes effective upon filing.

11
12 **NEW SECTION. Section 9. Rate filing review.** (1) The commissioner shall review each insurance
13 filing to ensure compliance with the following guidelines:

14 (a) The effective date of each workers' compensation insurer or advisory organization filing must
15 be the date specified in the filing. The effective date of the filing may not be earlier than 30 days after the
16 date on which the filing is received by the commissioner or the date of receipt of the information furnished
17 in support of the filing, if the supporting information is required by the commissioner.

18 (b) Upon written application of the insurer or advisory organization, the commissioner may
19 authorize a filing that becomes effective before the expiration of the period described in subsection (1)(a).

20 (c) A filing is considered to have met the requirements of this part unless disapproved by the
21 commissioner within the period described in subsection (1)(a) or any extension of the period.

22 (2) Whenever a filing is not accompanied by the information required under this section, the
23 commissioner shall inform the filer of the deficiency within 10 days of the initial filing. The filing is
24 considered made when the required information is furnished or when the filer certifies to the commissioner
25 that the additional information requested by the commissioner is not maintained or cannot be provided.

26
27 **NEW SECTION. Section 10. Improper rates -- hearing.** (1) If the commissioner finds that a rate
28 is not in compliance with [section 3] or that a rate has been set in violation of [section ~~43~~ 14], the
29 commissioner shall order that its use be discontinued for any policy issued or renewed after the date of the
30 order, and the order may prospectively provide for premium adjustment of any policy then in force.

1 (2) The order must be issued within 30 days after the close of a hearing, if one is requested by the
2 insurer, or within a reasonable time fixed by the commissioner. The order expires 1 year after its effective
3 date unless rescinded earlier by the commissioner.

4 (3) If the commissioner disapproves a rate under subsection (1), disapproval must take effect not
5 less than 15 days after the commissioner's order and the last previous rate in effect for the insurer must
6 be reimposed for a period of 1 year unless the commissioner approves a rate under the provisions of
7 subsections (5) or (6).

8 (4) A determination made by the commissioner under this section must be in accordance with
9 accepted actuarial standards on the basis of findings of fact and conclusions of law.

10 (5) For a period of 1 year after the effective date of a disapproval order under subsection (1), a rate
11 adopted to replace one disapproved under the order may not be used until it has been filed with the
12 commissioner and approved within 30 days.

13 (6) Whenever an insurer does not have legally effective rates pursuant to subsection (1), the
14 commissioner shall, on the insurer's request, specify interim rates for the insurer that are adequate to
15 protect the interests of all parties. The commissioner may order that a specified portion of the premiums
16 be placed in a special reserve established by the insurer. When new rates become legally effective, the
17 commissioner shall order the reserved funds or any overcharge in the interim rates to be distributed
18 appropriately, except that minimal adjustments may not be required.

19
20 **NEW SECTION. Section 11. Restrictions on certain insurers -- waiting period.** (1) The
21 commissioner may require that a particular insurer file any of its rates and supplementary rate information
22 30 days prior to the effective date of the rates, if the commissioner finds after a hearing that the protection
23 of the interests of the insurer's insureds and the public in this state requires closer supervision of the
24 insurer's rates.

25 (2) Upon written application by an insurer, the commissioner, following review, may authorize a
26 filing, which is effective before the expiration of the period described in subsection (1).

27 (3) The filing must be approved or disapproved during the waiting period and, if not disapproved
28 before the expiration of the waiting period, is considered to have met the requirements of this section.

29 (4) An insurer aggrieved by the commissioner's actions under this section may request a rehearing
30 by the commissioner after the expiration of 12 months from the date of the commissioner's initial order.

1 **NEW SECTION. Section 12. Delay of rates in noncompetitive market.** (1) A 30-day waiting period
2 may be implemented or extended under one of the following circumstances:

3 (a) after finding that the market is not competitive under [section 2], the commissioner adopts a
4 rule requiring that any subsequent changes in rates or supplementary information must be filed with the
5 commissioner at least 30 days before the changes become effective;

6 (b) the commissioner extends the waiting period under this section for a period not exceeding 30
7 additional days by written notice to the filer before the first 30-day period expires;

8 (c) upon written application by an insurer or advisory organization, the commissioner, following
9 review, authorizes a filing, which becomes effective before the expiration of the period described in
10 subsection (1)(a) or (1)(b); or

11 (d) the filing is approved or disapproved during the waiting period and, if not disapproved before
12 the expiration of the waiting period, is considered to have met the requirements of this section.

13 (2) If a rule is adopted under subsection (1), the commissioner may require the filing of supporting
14 data as to classes of risks or combinations of risk classes that the commissioner considers necessary for
15 the proper functioning of the rate monitoring and regulating process. The supporting data must include:

16 (a) the experience and judgment of the filer and, to the extent that the filer wishes or the
17 commissioner requires, the experience and judgment of other insurers or the advisory organization

18 **DESIGNATED UNDER [SECTION 5];**

19 (b) the interpretation of any statistical data upon which the filer relied;

20 (c) a description of the actuarial and statistical methods used in setting the rate; and

21 (d) any other relevant matter required by the commissioner.

22 (3) A rule adopted under this section expires 1 year after adoption unless renewed by the
23 commissioner after hearings and appropriate findings under this section.

24 (4) Whenever a filing is not accompanied by the information that the commissioner has required
25 under subsection (2), the commissioner shall inform the insurer within 10 days of the initial filing. The filing
26 is considered made when the required information is furnished.

27
28 **NEW SECTION. Section 13. Consent to rate.** Notwithstanding any other provision of this part,
29 upon the written consent of the insured, filed with the commissioner, a rate in excess of that determined
30 in accordance with the other provisions of this part may be used on any specific risk.

1 **NEW SECTION. Section 14. Acts reducing competition prohibited.** (1) In this section, the word
2 "insurer" includes two or more affiliated insurers engaged in joint or cooperative underwriting, investment
3 management, marketing, servicing, or administration of their business and affairs as insurers and:

4 (a) under common management; or

5 (b) under common controlling ownership or under other common effective legal control.

6 (2) An insurer or advisory organization may not:

7 (a) monopolize or attempt to monopolize or combine or conspire with any other person or persons
8 to monopolize the business of insurance of any kind, subdivision, or class;

9 (b) agree with any other insurer or advisory organization to charge or adhere to any rate or rating
10 plan other than the uniform experience rating plan or rating rules of the advisory organization, except as
11 needed to comply with the requirements of [section 7 8];

12 (c) make an agreement with any other insurer, advisory organization, or other person to
13 unreasonably restrain trade or substantially lessen competition in the business of insurance of any kind,
14 subdivision, or class; or

15 (d) make an agreement with any other insurer or advisory organization to refuse to deal with any
16 person in connection with the sale of insurance.

17 (3) The fact that two or more insurers, whether they are members or subscribers of a common
18 advisory organization, use consistently or intermittently the same advisory organization rules or insurer
19 guidelines, rating plans, rating schedules, rating rules, policy forms, rate classifications, underwriting rules,
20 surveys, or inspections or similar materials is not sufficient in itself to support a finding that an agreement
21 exists.

22 (4) An advisory organization or member or subscriber of an advisory organization may not interfere
23 with the right of any insurer to establish its rates independently of that advisory organization or to charge
24 rates different from the rates made by that advisory organization.

25 (5) Except as required by [section 7 8], an advisory organization may not have or adopt any rule
26 or exact any agreement or formulate or engage in any program that would require any member, subscriber,
27 or other insurer to:

28 (a) adhere to its rates; or

29 (b) prevent any insurer from acting independently.
30

1 **NEW SECTION. Section 15. Advisory organization -- permitted activity.** An advisory organization
2 may:

3 (1) develop statistical plans, including class definitions;

4 (2) collect statistical data from members, subscribers, or any other source;

5 (3) prepare and distribute pure premium rate data, adjusted for loss development and loss trending,
6 in accordance with its statistical plan. The data and adjustments must be in sufficient detail to permit
7 insurers to modify pure premiums based upon their own rating methods or interpretations of underlying
8 data.

9 (4) prepare and distribute manuals for rating rules and rating schedules that do not contain any
10 rules or schedules, including final rates, without information outside the manuals;

11 (5) distribute information that is filed with the commissioner and open to public inspection;

12 (6) conduct research and collect statistics in order to discover, identify, and classify information
13 relating to causes or prevention of losses;

14 (7) prepare and file policy forms and endorsements and consult with members, subscribers, and
15 others relative to their use and application;

16 (8) collect, compile, and distribute past and current prices of individual insurers, if the information
17 is made available to the general public;

18 (9) conduct research and collect information to determine the impact of benefit level changes on
19 pure premium rates;

20 (10) prepare and distribute rules and rating values for the uniform experience rating plan; and

21 (11) calculate and disseminate individual risk premium modification factors. **INDIVIDUAL RISK**
22 **PREMIUM MODIFICATION FACTORS MAY ONLY BE DISSEMINATED TO:**

23 **(A) A LICENSED PRODUCER OR A PLAN NO. 2 OR PLAN NO. 3 INSURER FOR THE BUSINESS OF**
24 **INSURANCE ONLY; AND**

25 **(B) THE DEPARTMENT OF LABOR AND INDUSTRY FOR REGULATORY PURPOSES ONLY.**
26 **INDIVIDUAL EMPLOYER PAYROLL AND LOSS INFORMATION MAY BE PROVIDED TO A PERSON OTHER**
27 **THAN THE CURRENT LICENSED PRODUCER OR A PLAN NO. 2 OR PLAN NO. 3 INSURER ONLY AFTER**
28 **OBTAINING THE EMPLOYER'S WRITTEN PERMISSION.**

29

30 **NEW SECTION. Section 16. Advisory organization -- prohibited activity.** In addition to other

1 prohibitions in this part, except as specifically permitted under [section ~~44~~ 15], an advisory organization
2 may not compile or distribute recommendations relating to rates that include expenses, other than loss
3 adjustment expenses, or profit.

4
5 **NEW SECTION. Section 17. Penalties -- suspension of license.** (1) The commissioner may impose
6 upon a person or organization that violates [sections 1 through ~~17~~ 18] a penalty of not more than \$500
7 for each violation.

8 (2) If the commissioner determines that the violation is willful, the commissioner may impose a
9 penalty of not more than \$1,000 for each violation in addition to any other penalty provided by law.

10 (3) The commissioner may suspend the license of an ~~advisory~~ insurer or **AN ADVISORY**
11 organization that fails to comply with any order within the time set by the order or extension granted by
12 the commissioner. The commissioner may not suspend a license for failure to comply with an order until
13 the time prescribed for appeal from the order has expired or, if appealed, until the order has been affirmed.
14 The commissioner may determine the period of a suspension, which remains in effect for the period unless
15 modified or rescinded or until the order upon which the suspension is based is modified, rescinded, or
16 reversed.

17 (4) Unless a consent decree has been entered, a penalty may not be imposed nor may a license
18 be suspended or revoked unless the commissioner, following a hearing, issues a written order with findings
19 of fact. The hearing must be held at least 10 days after written notice to the person or organization
20 specifying the alleged violation.

21 (5) A party aggrieved by an order or decision of the commissioner may, within 30 days after
22 receiving the commissioner's notice, make a written request for a hearing.

23
24 **NEW SECTION. Section 18. Appeals from commissioner.** (1) An order, decision, or act of the
25 commissioner under this part may be appealed to district court upon petition of a person aggrieved.

26 (2) A petition for review must be filed within 60 days from notice of the order, decision, or act.
27 The commencement of the proceeding does not affect enforcement or validity of the commissioner's action
28 unless the court determines, after notice to the commissioner, that a stay of enforcement until further
29 direction of the court will not injure the interests of the public.

1 **Section 19.** Section 33-16-303, MCA, is amended to read:

2 **"33-16-303. Use of rates, rating systems, underwriting rules, and policy or bond forms of rating**
 3 **or advisory organizations -- agreements to adhere to.** (1) Members and subscribers of rating or advisory
 4 organizations may use the rates, rating systems, underwriting rules, or policy or bond forms of ~~such~~ those
 5 organizations, either consistently or intermittently, but, except as provided in 33-16-105, 33-16-302,
 6 33-16-305, 33-16-307, and ~~33-16-1005~~ shall [sections 1 through 17 18], may not agree with each other
 7 or rating organizations or others to adhere ~~thereto~~ to the organizations' rates, systems, rules, policy, or
 8 bond forms.

9 (2) The fact that two or more admitted insurers, whether or not members or subscribers of a rating
 10 or advisory organization, use, either consistently or intermittently, the rates or rating systems made or
 11 adopted by a rating organization or the underwriting rules or policy or bond forms prepared by a rating or
 12 advisory organization ~~shall~~ is not ~~be~~ sufficient in itself to support a finding that an agreement ~~to so adhere~~
 13 prohibited under subsection (1) exists and may be used only for the purpose of supplementing or explaining
 14 direct evidence of the existence of any ~~such~~ agreement."
 15

16 **SECTION 20. SECTION 33-16-403, MCA, IS AMENDED TO READ:**

17 **"33-16-403. Examination of application and investigation of applicant -- issuance of license -- fee.**
 18 (1) The commissioner shall examine each application for license to act as a rating organization pursuant to
 19 this part or a workers' compensation advisory organization pursuant to part 10 and the documents filed
 20 ~~therewith~~ with the application and may make such further investigation of the applicant, its affairs, and its
 21 proposed plan of business as ~~he deems~~ the commissioner considers desirable.

22 (2) The commissioner shall issue the license applied for within 60 days of its filing ~~with him~~ if, from
 23 ~~such~~ the examination and investigation, ~~he~~ the commissioner is satisfied that:

24 (a) the business reputation of the applicant and its officers is good;

25 (b) the facilities of the applicant are adequate to enable it to furnish the services it proposes to
 26 furnish;

27 (c) the applicant and its proposed plan of operation conform to the requirements of this chapter.

28 (3) Otherwise, but only after hearing upon notice, the commissioner shall, in writing, deny the
 29 application and notify the applicant of ~~his~~ the decision and ~~his~~ the reasons therefor.

30 (4) The commissioner may grant an application in part only and issue a license to act as a rating

1 or workers' compensation advisory organization for one or more of the classes of insurance or subdivisions
 2 thereof or class of risk, or a part or combination thereof as are specified in the application, if the applicant
 3 qualifies for only a portion of the classes applied for.

4 (5) ~~Licenses~~ (a) Except as provided in subsection (5)(b), licenses issued pursuant to this section
 5 ~~shall~~ remain in effect until revoked as provided in this chapter. The fee for the license ~~shall be~~ is \$100
 6 annually ~~which shall~~ and must be deposited in the general fund.

7 (b) Each workers' compensation advisory organization is required to renew its license annually."
 8

9 **Section 21.** Section 33-16-1002, MCA, is amended to read:

10 "**33-16-1002. Applicability of part.** This part, together and in conjunction with parts 1 through 4
 11 of this chapter, applies to the making of premium rates for workers' compensation insurance issued under
 12 compensation plan No. 2 of the Workers' Compensation Act, Title 39, chapter 71, part 22, or related
 13 employer's liability insurance, but does not apply to reinsurance."
 14

15 **Section 22.** Section 33-16-1011, MCA, is amended to read:

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

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

19 (a) two representatives of private insurance carriers writing workers' compensation insurance in
 20 Montana. The members must be appointed by the Montana commissioner of insurance.

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

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

25 (d) one representative of an employer who is insured by either a private insurance carrier or the
 26 state compensation insurance fund, appointed by the commissioner of insurance.

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

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

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

5 (5) The committee must be staffed by the ~~rating advisory~~ organization designated under [section
 6 5] and be funded from the operations budget of the ~~rating advisory~~ organization. Committee members may,
 7 if they request, be paid their actual and necessary travel expenses.

8 (6) Documents and other information concerning the committee's actions must be made available
 9 for public review in the office of the commissioner of insurance."
 10

11 **Section 23.** Section 33-16-1012, MCA, is amended to read:

12 **"33-16-1012. Functions and powers of classification and rating committee -- hearings --**
 13 **rulemaking.** (1) The classification and rating committee shall:

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

15 (b) make the final determination regarding the establishment of all classifications;

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

17 ~~(d)~~(c) publish material and pamphlets as it considers appropriate;

18 ~~(e)~~(d) act as a review committee concerning objections filed by employers in relation to
 19 classifications assigned to the employer by an insurer; and

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

24 (2) (a) A hearing conducted by the committee pursuant to subsection ~~(1)(e)~~ (1)(d) must be an
 25 informal proceeding as provided in 2-4-604.

26 (b) A party aggrieved by a decision of the committee rendered after a hearing conducted pursuant
 27 to subsection (2)(a) may petition for judicial review of the decision pursuant to Title 2, chapter 4, part 7.

28 (3) The committee is subject to the provisions of Title 2, chapter 3, parts 1 and 2."
 29

30 **Section 24.** Section 39-71-435, MCA, is amended to read:

1 **"39-71-435. Workers' compensation and employers' liability insurance -- optional deductibles. (1)**

2 An insurer issuing a workers' compensation or an employer's liability insurance policy may offer to the
3 policyholder, as part of the policy or by endorsement, optional deductibles for benefits payable under the
4 policy consistent with the standards contained in subsection (3).

5 (2) ~~A rating~~ The advisory organization designated under [section 5] may develop and file a
6 deductible plan or plans on behalf of its members consistent with the standards contained in subsection
7 (3).

8 (3) The commissioner of insurance shall approve a deductible plan that is in accordance with the
9 following standards:

10 (a) Claimants' rights are properly protected and claimants' benefits are paid without regard to the
11 deductible.

12 (b) Premium reductions reflect the type and level of the deductible, consistent with accepted
13 actuarial standards.

14 (c) Premium reductions for deductibles are determined before application of any experience
15 modification, premium surcharge, or premium discount.

16 (d) Recognition is given to policyholder characteristics, including but not limited to size, financial
17 capabilities, nature of activities, and number of employees.

18 (e) The policyholder is liable to the insurer for the deductible amount in regard to benefits paid for
19 compensable claims.

20 (f) The insurer pays all of the deductible amount applicable to a compensable claim to the person
21 or provider entitled to benefits and then seeks reimbursement from the policyholder for the applicable
22 deductible amount.

23 (g) Failure by the policyholder to reimburse deductible amounts to the insurer is treated under the
24 policy as nonpayment of premium.

25 (h) Losses subject to the deductible must be reported and recorded as losses for purposes of
26 calculating rates for a policyholder on the same basis as losses under policies providing first dollar coverage.

27 (4) The state compensation insurance fund, plan No. 3, may adopt the plan filed by the
28 DESIGNATED ~~rating~~ advisory organization or adopt an optional deductible plan that meets the requirements
29 of this section.

30 (5) For purposes of 39-71-201, liability for assessments must be ascertained based on premiums

1 collected, in the case of policies written under plan No. 2, or on the assessment levied, in the case of
 2 policies written under plan No. 3, for which the policyholder would have been obligated without the
 3 deductible. For all other taxes and assessments based on premium, the amount of premium or assessment
 4 must be determined after application of the deductible."

5

6 **Section 25.** Section 39-71-2204, MCA, is amended to read:

7 **"39-71-2204. Insurer to submit notice of coverage within thirty days -- penalty for failure.** (1) The
 8 insurer shall, within 30 days after the issuance of the policy of workers' compensation insurance, submit
 9 to the department the notice of coverage stating the effective date of the policy insuring the employer and
 10 ~~such~~ other information ~~as~~ that may be required by the department.

11 (2) The department may:

12 (a) recognize the ~~national council on compensation insurance~~ advisory organization designated
 13 under [section 5] as an agent for authorized workers' compensation insurers in Montana; and

14 (b) under terms and conditions acceptable to the department, accept notice of coverage received
 15 from ~~the national council on compensation insurance~~ the advisory organization designated under [section
 16 5] as the insurer's notice of coverage.

17 (3) The department may, in its discretion, assess a penalty of no more than \$200 against an insurer
 18 that as a general business practice does not comply with the 30-day notice requirement set forth in
 19 subsection (1)."

20

21 **Section 26.** Section 39-71-2205, MCA, is amended to read:

22 **"39-71-2205. Policy in effect until canceled or replaced -- twenty-day notification of cancellation**
 23 **required -- penalty.** (1) The policy remains in effect until canceled, and cancellation may take effect only
 24 by written notice to the named insured and to the department at least 20 days prior to the date of
 25 cancellation. However, the policy terminates on the effective date of a replacement or succeeding workers'
 26 compensation insurance policy issued to the insured. Nothing in this section prevents an insurer from
 27 canceling a policy of workers' compensation insurance before a replacement policy is issued to the insured.

28 (2) The department may:

29 (a) recognize ~~the national council on compensation insurance~~ the advisory organization designated
 30 under [section 5] as an agent for authorized workers' compensation insurers in Montana; and

1 (b) under terms and conditions acceptable to the department, accept notice of cancellation received
 2 from ~~the national council on compensation insurance~~ the advisory organization, DESIGNATED UNDER
 3 [SECTION 5], as the insurer's notice of cancellation.

4 (3) (a) The department may assess a penalty of up to \$200 against an insurer that does not comply
 5 with the notice requirement in subsection (1).

6 (b) An insurer may contest the penalty assessment in a hearing conducted according to department
 7 rules."

8
 9 **Section 27.** Section 39-71-2211, MCA, is amended to read:

10 "**39-71-2211. Premium rates for construction industry -- filing required.** (1) With respect to each
 11 classification of risk in the construction industry under plan No. 2, the ~~rating organization described in~~
 12 ~~33-16-1005~~ advisory organization designated under [section 5] shall file with the commissioner of insurance
 13 a method of computing premiums that does not impose a higher insurance premium solely because of an
 14 employer's higher rate of wages paid.

15 (2) The commissioner shall accept a filing under subsection (1) that includes a reasonable method
 16 of recognizing differences in rates of pay. This method must use a credit scale with the starting point set
 17 at one and one-half times the Montana average weekly wage as reported by the department.

18 (3) The ~~rating~~ advisory organization shall file a revenue neutral plan for new and renewed policies
 19 ~~by July 1, 1992,~~ for prompt and orderly transition to a method of computing premiums that is in compliance
 20 with the requirements of this section.

21 (4) The state compensation insurance fund, plan No. 3, shall adopt the plan filed by the
 22 DESIGNATED ~~rating~~ advisory organization or adopt a credit scale plan that meets the requirements of this
 23 section."

24
 25 **Section 28.** Section 39-71-2316, MCA, is amended to read:

26 "**39-71-2316. Powers of the state fund.** For the purposes of carrying out its functions, the state
 27 fund may:

28 (1) insure any employer for workers' compensation and occupational disease liability as the
 29 coverage is required by the laws of this state. The state fund may charge a minimum yearly premium to
 30 cover its administrative costs for coverage of a small employer.

1 (2) sue and be sued;

2 (3) except as provided in section 21, Chapter 4, Special Laws of May 1990, enter into contracts
3 relating to the administration of the state fund, including claims management, servicing, and payment;

4 (4) collect and disburse money received;

5 (5) adopt classifications and charge premiums for the classifications so that the state fund will be
6 neither more nor less than self-supporting. Premium rates for classifications may only be adopted and
7 changed using a process, a procedure, formulas, and factors set forth in rules adopted under Title 2,
8 chapter 4, parts 2 through 4. After ~~such~~ the rules have been adopted, the state fund need not follow the
9 rulemaking provisions of Title 2, chapter 4, when changing classifications and premium rates. The
10 contested case rights and provisions of Title 2, chapter 4, do not apply to an employer's classification or
11 premium rate. The state fund ~~must~~ is required to belong to ~~the national council on compensation insurance~~
12 the A LICENSED WORKERS' COMPENSATION advisory organization designated by the commissioner of
13 insurance under [section 5] OR A LICENSED WORKERS' COMPENSATION RATING ORGANIZATION UNDER
14 TITLE 33, CHAPTER 16, PART 4, and shall ~~may~~ use the ~~classifications of employment~~ uniform classification
15 system and experience rating plan CLASSIFICATIONS OF EMPLOYMENT adopted by the ~~national council~~
16 ~~and corresponding rates~~ DESIGNATED WORKERS' COMPENSATION advisory organization, AS PROVIDED
17 IN TITLE 33, CHAPTER 16, PART 10, AND CORRESPONDING RATES as a basis for setting its own rates.
18 EXCEPT AS PROVIDED IN TITLE 33, CHAPTER 16, PART 10, A WORKERS' COMPENSATION ADVISORY
19 ORGANIZATION OR OTHER PERSON MAY NOT, WITHOUT FIRST OBTAINING THE WRITTEN PERMISSION
20 OF THE EMPLOYER, USE, SELL, OR DISTRIBUTE AN EMPLOYER'S SPECIFIC PAYROLL OR LOSS
21 INFORMATION, INCLUDING BUT NOT LIMITED TO EXPERIENCE MODIFICATION FACTORS.

22 (6) pay the amounts determined due under a policy of insurance issued by the state fund;

23 (7) hire personnel;

24 (8) declare dividends if there is an excess of assets over liabilities. However, dividends may not
25 be paid until adequate actuarially determined reserves are set aside. If those reserves have been set aside,
26 money that can be declared as a dividend must be transferred to the account created by 39-71-2321 for
27 claims for injuries resulting from accidents that occurred before July 1, 1990, and used for the purposes
28 of that account. After all claims funded by that account have been paid, dividends may be declared and
29 paid to insureds.

30 (9) perform all functions and exercise all powers of a private insurance carrier that are necessary,

1 appropriate, or convenient for the administration of the state fund."
2

3 **NEW SECTION. Section 29. Repealer.** Sections 33-16-1004 and 33-16-1005, MCA, are repealed.
4

5 **NEW SECTION. Section 30. Coordination.** If [this act] is passed and approved and if it amends
6 39-71-2316, then Senate Bill No. 21 is void.
7

8 **NEW SECTION. Section 31. Codification instruction.** [Sections 1 through ~~47~~ 18] are intended to
9 be codified as an integral part of Title 33, chapter 16, part 10, and the provisions of Title 33, chapter 16,
10 part 10, apply to [sections 1 through ~~47~~ 18].
11

12 **NEW SECTION. Section 32. Saving clause.** [This act] does not affect rights and duties that
13 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this
14 act].
15

16 **NEW SECTION. Section 33. Severability.** If a part of [this act] is invalid, all valid parts that are
17 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
18 applications, the part remains in effect in all valid applications that are severable from the invalid
19 applications.
20

21 **NEW SECTION. Section 34. Applicability.** [This act] applies to rate filings by the advisory
22 organization on or after [the effective date of this act] and to rates filed by insurers on or after the effective
23 date of the advisory organization's initially approved loss cost filing.
24

-END-

1 SENATE BILL NO. 384

2 INTRODUCED BY BENEDICT

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE WORKERS' COMPENSATION
5 INSURANCE RATING LAWS; PROVIDING DEFINITIONS; PROVIDING FOR THE DETERMINATION OF A
6 COMPETITIVE WORKERS' COMPENSATION MARKET; REQUIRING THE COMMISSIONER OF INSURANCE
7 TO DESIGNATE AN ADVISORY ORGANIZATION; AUTHORIZING THE FILING AND ADOPTION BY AN
8 INSURER OF AN ADVISORY ORGANIZATION'S PROSPECTIVE LOSS COSTS; AUTHORIZING AN INSURER
9 TO FILE ITS OWN RATES AND SUPPLEMENTARY RATE INFORMATION; PROVIDING FOR RATE REVIEW;
10 ELIMINATING THE REQUIREMENT THAT A RATING ORGANIZATION FILE WORKERS' COMPENSATION
11 RATES; AMENDING SECTIONS 33-16-303, 33-16-403, 33-16-1002, 33-16-1011, 33-16-1012, 39-71-435,
12 39-71-2204, 39-71-2205, 39-71-2211, AND 39-71-2316, MCA; REPEALING SECTIONS 33-16-1004 AND
13 33-16-1005, MCA; AND PROVIDING AN APPLICABILITY DATE."

THERE ARE NO CHANGES IN THIS BILL AND IT WILL
NOT BE REPRINTED. PLEASE REFER TO SECOND
READING COPY (YELLOW) FOR COMPLETE TEXT.

1 SENATE BILL NO. 384

2 INTRODUCED BY BENEDICT

3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE WORKERS' COMPENSATION
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 9 TO FILE ITS OWN RATES AND SUPPLEMENTARY RATE INFORMATION; PROVIDING FOR RATE REVIEW;
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 11 RATES; AMENDING SECTIONS 33-16-303, 33-16-403, 33-16-1002, 33-16-1011, 33-16-1012, 39-71-435,
 12 39-71-2204, 39-71-2205, 39-71-2211, AND 39-71-2316, MCA; REPEALING SECTIONS 33-16-1004 AND
 13 33-16-1005, MCA; AND PROVIDING AN APPLICABILITY DATE."

14
 15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16
 17 NEW SECTION. **Section 1. Definitions.** As used in this part, the following definitions apply:

18 (1) "Accepted actuarial standards" means the standards adopted by the casualty actuarial society
 19 in its Statement of Principles Regarding Property and Casualty Insurance Ratemaking and the Standards of
 20 Practice adopted by the actuarial standards board.

21 (2) "Advisory organization" means a person or organization that either has two or more member
 22 insurers or is controlled either directly or indirectly by two or more insurers and that assists insurers in
 23 ratemaking-related activities. The term does not include a joint underwriting association, any actuarial or
 24 legal consultant, or any employee of an insurer or insurers under common control or management or their
 25 employees or manager. As used in this subsection, two or more insurers who have a common ownership
 26 or operate in this state under common management or control constitute a single insurer.

27 (3) "Classification system" means the plan, system, or arrangement for recognizing differences in
 28 exposure to hazards among industries, occupations, or operations of insurance policyholders.

29 (4) "Contingencies" means provisions in rates to recognize the uncertainty of the estimates of
 30 losses, loss adjustment expenses, other operating expenses, and investment income and profit that

1 comprise those rates. The provisions may be explicit, including but not limited to a specific charge to
2 reflect systematic variations of estimated costs from expected costs, or implicit, including but not limited
3 to a consideration in selecting a single estimate from a reasonable range of estimates, or both.

4 (5) "Developed losses" means adjusted losses, including loss adjustment expenses, using accepted
5 actuarial standards to eliminate the effect of differences between current payment or reserve estimates and
6 those needed to provide actual ultimate loss payments, including loss adjustment expense payments.

7 (6) "Expenses" means the portion of a rate that is attributable to acquisition, filed supervision and
8 collection expenses, general expenses and taxes, licenses, or fees.

9 (7) "Experience rating" means a rating procedure using past insurance experience of the individual
10 policyholder to forecast future losses by measuring the policyholder's loss experience against the loss
11 experience of policyholders in the same classification to produce a prospective premium credit, debit, or
12 unity modification.

13 (8) "Insurer" means a person licensed to write workers' compensation insurance as a plan No. 2
14 insurer under the laws of the state.

15 (9) "Loss trending" means a procedure for projecting developed losses to the average date of loss
16 for the period during which the policies are to be effective, including loss ratio trending.

17 (10) "Market" means the interaction in this state between buyers and plan No. 2 sellers of workers'
18 compensation and employer's liability insurance pursuant to the provisions of this part.

19 (11) (a) "Prospective loss costs" means historical aggregate losses and loss adjustment expenses,
20 including all assessments that are loss-based, projected through development to their ultimate value and
21 through trending to a future point in time and ascertained by accepted actuarial standards.

22 (b) The term does not include provisions for profit or expenses other than loss adjustment expenses
23 and assessments that are loss-based.

24 (12) "Pure premium rate" means the portion of the rate that represents the loss cost per unit of
25 exposure, including loss adjustment expense.

26 (13) (a) "Rate" or "rates" means rate of premium, policy and membership fee, or any other charge
27 made by an insurer for or in connection with a contract or policy of workers' compensation and employer's
28 liability insurance, prior to application of individual risk variations based on loss or expense considerations.

29 (b) The term does not include minimum premiums.

30 (14) "Reserve estimates" means provisions for insurer obligations for future payments of loss or

1 loss adjustment expenses.

2 (15) "Statistical plan" means the plan, system, or arrangement that is used in collecting data.

3 (16) "Supplementary rate information" means a manual or plan of rates, statistical plan,
4 classification system, minimum premium, policy fee, rating rule, rate-related underwriting rule, and any
5 other information needed to determine the applicable premium for an individual insured that is consistent
6 with the purposes of this part and with rules prescribed by rule of the commissioner.

7 (17) "Supporting information" means the experience and judgment of the filer and the experience
8 or data of other insurers or advisory organizations relied on by the filer, the interpretation of any statistical
9 data relied on by the filer, descriptions of methods used in making the rates, and any other similar
10 information required to be filed by the commissioner.

11

12 **NEW SECTION. Section 2. Competitive market -- hearing.** (1) A competitive market is presumed
13 to exist unless the commissioner, after hearing, issues an order stating that a reasonable degree of
14 competition does not exist in the market. The order may not expire later than 1 year after issuance.

15 (2) In determining whether a reasonable degree of competition exists, the commissioner shall
16 consider the following factors:

17 (a) the number of insurers actively engaged in providing coverage;

18 (b) market shares and changes in market shares;

19 (c) ease of entry into the market;

20 (d) market concentration among plan No. 2 insurers as measured by the Herfindahl-Hirschman
21 index;

22 (e) whether long-term profitability for insurers in the market is unreasonably high in relation to the
23 risks being insured;

24 (f) whether long-term profitability for insurers in the market is reasonable in relation to industries
25 of comparable business risks; and

26 (g) generally accepted and relevant tests relating to competitive market structure, market
27 performance, and market conduct.

28 (2) The workers' compensation insurance market may not be determined to be noncompetitive if
29 the market concentration of the 50 largest insurers writing workers' compensation insurance under plan
30 No. 2 satisfied the U.S. department of justice merger guidelines for an unconcentrated market.

1 (3) The commissioner's determinations must be made on the basis of findings of fact and
2 conclusions of law.

3

4 **NEW SECTION. Section 3. Ratemaking standards -- review by commissioner.** (1) Rates may not
5 be excessive, inadequate, or unfairly discriminatory.

6 (2) Rates in a competitive market are not excessive. Rates in a noncompetitive market are
7 excessive if they are likely to produce a long-run profit that is unreasonably high in relation to services
8 rendered.

9 (3) A rate may not be determined to be inadequate unless:

10 (a) it is clearly insufficient to sustain projected losses and expenses; and

11 (b) the rate is unreasonably low and the use of the rate by the insurer has had or, if continued, will
12 tend to create a monopoly in the market; or

13 (c) funds equal to the full, ultimate cost of anticipated losses and loss adjustment expenses are not
14 produced when prospective loss costs are applied to anticipated payrolls.

15 (4) Unfair discrimination exists if, after allowing for practical limitations, price differentials fail to
16 reflect equitably the differences in expected losses and expenses. A rate is not unfairly discriminatory
17 because different premiums result for policyholders with different loss exposures or expense levels.

18 (5) In determining whether rates comply with standards under subsection (1), consideration must
19 be given to:

20 (a) past and prospective loss experience within and outside Montana, in accordance with accepted
21 actuarial principles;

22 (b) catastrophe hazards and contingencies;

23 (c) past and prospective expenses within and outside Montana;

24 (d) loadings for leveling premium rates over time for dividends, savings, or unabsorbed premium
25 deposits allowed or returned by insurers to their policyholders, members, or subscribers;

26 (e) a reasonable margin for underwriting profit; and

27 (f) all other relevant factors within and outside Montana.

28 (6) The systems of expense provisions included in the rates for use by an insurer or group of
29 insurers may differ from those of any other insurer or group of insurers to reflect the requirements of the
30 operating methods of the insurer or group insurers.

1 (7) The rate may contain provisions of contingencies and an allowance permitting a reasonable
 2 profit. In determining the reasonableness of a profit, consideration must be given to all investment income
 3 attributable to premiums and the reserves associated with those premiums.

4 (8) The commissioner may investigate and determine whether rates in Montana are excessive,
 5 inadequate, or unfairly discriminatory. In any investigation and determination, the commissioner shall also
 6 consider the factors specified in [section 2].

7
 8 **NEW SECTION. Section 4. Dividends -- no regulation or prohibition.** (1) An advisory organization
 9 may not adopt a rule that would regulate or prohibit the payment of dividends, savings, or unabsorbed
 10 premium deposits allowed or returned by insurers to their policyholders, members, or subscribers.

11 (2) A plan for the payment of dividends, savings, or unabsorbed premium deposits allowed or
 12 returned by insurers to their policyholders, members, or subscribers is not a rating plan or system.

13 (3) It is an unfair trade practice under 33-18-1003 to make the payment of a dividend or any
 14 portion of it conditioned upon renewal of the policy or contract.

15
 16 **NEW SECTION. Section 5. Membership in advisory organization.** (1) The commissioner shall
 17 designate one workers' compensation advisory organization to assist the commissioner in gathering,
 18 compiling, and reporting relevant statistical information. Each ~~plan No. 2 and plan No. 3~~ workers'
 19 compensation insurer shall record and report its workers' compensation experience to the DESIGNATED
 20 advisory organization as set forth in the uniform statistical plan approved by the commissioner.

21 (2) Each ~~plan No. 2 and plan No. 3~~ workers' compensation insurer must be a member or subscriber
 22 of the DESIGNATED workers' compensation advisory organization. Each workers' compensation insurer
 23 may adhere to the policy forms filed by the advisory organization.

24 (3) Each ~~plan No. 2 and plan No. 3~~ workers' compensation insurer shall adhere to a uniform
 25 classification system and uniform experience rating plan that has been filed by the DESIGNATED advisory
 26 organization with the commissioner and approved by the commissioner, ~~subject to deviations from the~~
 27 ~~uniform classification system and experience rating plan that a plan No. 3 insurer adopts pursuant to~~
 28 ~~39-71-2316(5).~~

29 (4) Each ~~plan No. 2 and plan No. 3~~ workers' compensation insurer shall use the forms and adhere
 30 to the rules that the DESIGNATED advisory organization shall develop and file with the commissioner. The

1 forms and rules must be reasonably related to the recording and reporting of data pursuant to the uniform
2 statistical plan, the uniform experience rating plan, and the uniform classification system.

3 (5) The methodology of the experience rating plan required under subsection (3) must be based
4 on:

5 (a) reasonable eligibility standards;

6 (b) incentives for loss prevention; and

7 (c) a premium differential to encourage safety.

8 (6) The DESIGNATED advisory organization or an insurer may file rating plans with the
9 commissioner that provide for prospective or retrospective premium adjustment based on an insured's
10 expected or actual loss experience, including but not limited to scheduled rating adjustments, retrospective
11 rating plans, optional deductible plans under 39-71-435, a construction industry premium credit plan under
12 39-71-2211, or other plans as authorized by statute or approved by the commissioner.

13
14 NEW SECTION. SECTION 6. PLAN NO. 3 MEMBERSHIP IN LICENSED WORKERS'
15 COMPENSATION ADVISORY ORGANIZATION -- REPORTING REQUIREMENTS. (1) THE PLAN NO. 3
16 INSURER UNDER TITLE 39, CHAPTER 71, PART 23, IS REQUIRED TO BE A MEMBER OF A LICENSED
17 WORKERS' COMPENSATION ADVISORY ORGANIZATION OR A LICENSED WORKERS' COMPENSATION
18 RATING ORGANIZATION UNDER TITLE 33, CHAPTER 16, PART 4.

19 (2) IF THE PLAN NO. 3 INSURER IS NOT A MEMBER OF THE WORKERS' COMPENSATION
20 ADVISORY ORGANIZATION DESIGNATED UNDER [SECTION 5], THEN, SUBJECT TO THE DEVIATIONS
21 FROM THE UNIFORM STATISTICAL PLAN, UNIFORM CLASSIFICATION SYSTEM, AND UNIFORM
22 EXPERIENCE RATING PLANS THAT MAY BE APPROVED BY THE BOARD OF DIRECTORS OF THE PLAN
23 NO. 3 INSURER AS PROVIDED IN 39-71-2316(5), THE INSURER SHALL:

24 (A) RECORD AND REPORT ITS WORKERS' COMPENSATION EXPERIENCE TO THE DESIGNATED
25 ADVISORY ORGANIZATION AS REQUIRED IN THE UNIFORM STATISTICAL PLAN OF THE DESIGNATED
26 WORKERS' COMPENSATION ADVISORY ORGANIZATION APPROVED BY THE COMMISSIONER, THE
27 UNIFORM CLASSIFICATION SYSTEM, AND THE UNIFORM EXPERIENCE RATING PLAN THAT HAVE BEEN
28 FILED BY THE DESIGNATED ADVISORY ORGANIZATION WITH AND APPROVED BY THE COMMISSIONER;
29 AND

30 (B) USE THE FORMS AND ADHERE TO THE RULES THAT THE DESIGNATED ADVISORY

1 ORGANIZATION DEVELOPS AND FILES WITH THE COMMISSIONER UNDER [SECTION 5].

2
3 NEW SECTION. Section 7. Interchange of rating plan -- data exchange -- cooperative action in
4 ratemaking -- violation of part. (1) Reasonable rules and plans may be adopted by the commissioner for
5 the interchange of data necessary for the application of rating plans.

6 (2) To ensure conformity in administering rate regulatory laws, the commissioner, each insurer, and
7 the advisory organization designated by the commissioner may exchange information and experience data
8 with insurance regulatory officials, insurers, and advisory organizations in other states and may consult with
9 them with respect to ratemaking and the application of rating systems.

10 (3) Cooperation among advisory organizations or among insurers and advisory organizations in
11 ratemaking or in other matters within the scope of this part is authorized, but the filings resulting from the
12 cooperation are subject to all provisions of this part.

13 (4) The commissioner may review the cooperative activities and practices. If, after hearing, any
14 cooperative activity or practice is found to violate the provisions of this part, a written order may be issued
15 specifying that the activity or practice violates the provision of this part and requiring the discontinuance
16 of the activity or practice.

17
18 NEW SECTION. Section 8. Rate filings. (1) ~~The~~ A workers' compensation advisory organization
19 shall file with the commissioner:

- 20 (a) workers' compensation rates and rating plans that are limited to prospective loss costs;
21 (b) each workers' compensation policy form to be used by its members or subscribers;
22 (c) the uniform classification plan and rules of the advisory organization;
23 (d) the uniform experience rating plan and rules of the advisory organization; and
24 (e) any other information that the commissioner requests and is entitled to receive under this part.

25 (2) Each insurer shall file with the commissioner all rates, supplementary rate information, and any
26 changes and amendments made by it for use in this state as required by the commissioner under [section
27 ~~8(2)~~ 9(2)].

28 (3) An insurer may establish rates and supplementary rate information based upon the factors in
29 [section 3]. An insurer may adopt by reference, with or without deviation, the prospective loss costs filed
30 by the advisory organization DESIGNATED UNDER [SECTION 5] or the rates and supplementary rate

1 information filed by another insurer.

2 (4) An insurer may not make or issue a contract or policy of insurance under this part, except in
3 accordance with the filings that are in effect for the insurer as provided in this part.

4 (5) In addition to other prohibitions in this part, an advisory organization may not file rates,
5 supplementary rate information, or supporting information on behalf of an insurer.

6 (6) If each rate in a schedule of workers' compensation rates for specific classifications of risks
7 filed by an insurer is not lower than the prospective loss costs contained in the schedule of workers'
8 compensation rates for those classifications filed by ~~an~~ THE DESIGNATED advisory organization under
9 [section ~~7(1)~~ 8(1)], the schedule of rates filed by the insurer is not subject to [section ~~8(1)~~ 9(1)] but
10 becomes effective upon filing.

11

12 **NEW SECTION. Section 9. Rate filing review.** (1) The commissioner shall review each insurance
13 filing to ensure compliance with the following guidelines:

14 (a) The effective date of each workers' compensation insurer or advisory organization filing must
15 be the date specified in the filing. The effective date of the filing may not be earlier than 30 days after the
16 date on which the filing is received by the commissioner or the date of receipt of the information furnished
17 in support of the filing, if the supporting information is required by the commissioner.

18 (b) Upon written application of the insurer or advisory organization, the commissioner may
19 authorize a filing that becomes effective before the expiration of the period described in subsection (1)(a).

20 (c) A filing is considered to have met the requirements of this part unless disapproved by the
21 commissioner within the period described in subsection (1)(a) or any extension of the period.

22 (2) Whenever a filing is not accompanied by the information required under this section, the
23 commissioner shall inform the filer of the deficiency within 10 days of the initial filing. The filing is
24 considered made when the required information is furnished or when the filer certifies to the commissioner
25 that the additional information requested by the commissioner is not maintained or cannot be provided.

26

27 **NEW SECTION. Section 10. Improper rates -- hearing.** (1) If the commissioner finds that a rate
28 is not in compliance with [section 3] or that a rate has been set in violation of [section ~~13~~ 14], the
29 commissioner shall order that its use be discontinued for any policy issued or renewed after the date of the
30 order, and the order may prospectively provide for premium adjustment of any policy then in force.

1 (2) The order must be issued within 30 days after the close of a hearing, if one is requested by the
2 insurer, or within a reasonable time fixed by the commissioner. The order expires 1 year after its effective
3 date unless rescinded earlier by the commissioner.

4 (3) If the commissioner disapproves a rate under subsection (1), disapproval must take effect not
5 less than 15 days after the commissioner's order and the last previous rate in effect for the insurer must
6 be reimposed for a period of 1 year unless the commissioner approves a rate under the provisions of
7 subsections (5) or (6).

8 (4) A determination made by the commissioner under this section must be in accordance with
9 accepted actuarial standards on the basis of findings of fact and conclusions of law.

10 (5) For a period of 1 year after the effective date of a disapproval order under subsection (1), a rate
11 adopted to replace one disapproved under the order may not be used until it has been filed with the
12 commissioner and approved within 30 days.

13 (6) Whenever an insurer does not have legally effective rates pursuant to subsection (1), the
14 commissioner shall, on the insurer's request, specify interim rates for the insurer that are adequate to
15 protect the interests of all parties. The commissioner may order that a specified portion of the premiums
16 be placed in a special reserve established by the insurer. When new rates become legally effective, the
17 commissioner shall order the reserved funds or any overcharge in the interim rates to be distributed
18 appropriately, except that minimal adjustments may not be required.

19
20 **NEW SECTION. Section 11. Restrictions on certain insurers -- waiting period.** (1) The
21 commissioner may require that a particular insurer file any of its rates and supplementary rate information
22 30 days prior to the effective date of the rates, if the commissioner finds after a hearing that the protection
23 of the interests of the insurer's insureds and the public in this state requires closer supervision of the
24 insurer's rates.

25 (2) Upon written application by an insurer, the commissioner, following review, may authorize a
26 filing, which is effective before the expiration of the period described in subsection (1).

27 (3) The filing must be approved or disapproved during the waiting period and, if not disapproved
28 before the expiration of the waiting period, is considered to have met the requirements of this section.

29 (4) An insurer aggrieved by the commissioner's actions under this section may request a rehearing
30 by the commissioner after the expiration of 12 months from the date of the commissioner's initial order.

1 **NEW SECTION. Section 12. Delay of rates in noncompetitive market.** (1) A 30-day waiting period
2 may be implemented or extended under one of the following circumstances:

3 (a) after finding that the market is not competitive under [section 2], the commissioner adopts a
4 rule requiring that any subsequent changes in rates or supplementary information must be filed with the
5 commissioner at least 30 days before the changes become effective;

6 (b) the commissioner extends the waiting period under this section for a period not exceeding 30
7 additional days by written notice to the filer before the first 30-day period expires;

8 (c) upon written application by an insurer or advisory organization, the commissioner, following
9 review, authorizes a filing, which becomes effective before the expiration of the period described in
10 subsection (1)(a) or (1)(b); or

11 (d) the filing is approved or disapproved during the waiting period and, if not disapproved before
12 the expiration of the waiting period, is considered to have met the requirements of this section.

13 (2) If a rule is adopted under subsection (1), the commissioner may require the filing of supporting
14 data as to classes of risks or combinations of risk classes that the commissioner considers necessary for
15 the proper functioning of the rate monitoring and regulating process. The supporting data must include:

16 (a) the experience and judgment of the filer and, to the extent that the filer wishes or the
17 commissioner requires, the experience and judgment of other insurers or the advisory organization

18 **DESIGNATED UNDER [SECTION 5]:**

19 (b) the interpretation of any statistical data upon which the filer relied;

20 (c) a description of the actuarial and statistical methods used in setting the rate; and

21 (d) any other relevant matter required by the commissioner.

22 (3) A rule adopted under this section expires 1 year after adoption unless renewed by the
23 commissioner after hearings and appropriate findings under this section.

24 (4) Whenever a filing is not accompanied by the information that the commissioner has required
25 under subsection (2), the commissioner shall inform the insurer within 10 days of the initial filing. The filing
26 is considered made when the required information is furnished.

27
28 **NEW SECTION. Section 13. Consent to rate.** Notwithstanding any other provision of this part,
29 upon the written consent of the insured, filed with the commissioner, a rate in excess of that determined
30 in accordance with the other provisions of this part may be used on any specific risk.

1 **NEW SECTION. Section 14. Acts reducing competition prohibited.** (1) In this section, the word
2 "insurer" includes two or more affiliated insurers engaged in joint or cooperative underwriting, investment
3 management, marketing, servicing, or administration of their business and affairs as insurers and:

4 (a) under common management; or

5 (b) under common controlling ownership or under other common effective legal control.

6 (2) An insurer or advisory organization may not:

7 (a) monopolize or attempt to monopolize or combine or conspire with any other person or persons
8 to monopolize the business of insurance of any kind, subdivision, or class;

9 (b) agree with any other insurer or advisory organization to charge or adhere to any rate or rating
10 plan other than the uniform experience rating plan or rating rules of the advisory organization, except as
11 needed to comply with the requirements of [section 7 8];

12 (c) make an agreement with any other insurer, advisory organization, or other person to
13 unreasonably restrain trade or substantially lessen competition in the business of insurance of any kind,
14 subdivision, or class; or

15 (d) make an agreement with any other insurer or advisory organization to refuse to deal with any
16 person in connection with the sale of insurance.

17 (3) The fact that two or more insurers, whether they are members or subscribers of a common
18 advisory organization, use consistently or intermittently the same advisory organization rules or insurer
19 guidelines, rating plans, rating schedules, rating rules, policy forms, rate classifications, underwriting rules,
20 surveys, or inspections or similar materials is not sufficient in itself to support a finding that an agreement
21 exists.

22 (4) An advisory organization or member or subscriber of an advisory organization may not interfere
23 with the right of any insurer to establish its rates independently of that advisory organization or to charge
24 rates different from the rates made by that advisory organization.

25 (5) Except as required by [section 7 8], an advisory organization may not have or adopt any rule
26 or exact any agreement or formulate or engage in any program that would require any member, subscriber,
27 or other insurer to:

28 (a) adhere to its rates; or

29 (b) prevent any insurer from acting independently.

30

1 **NEW SECTION. Section 15. Advisory organization -- permitted activity.** An advisory organization
2 may:

3 (1) develop statistical plans, including class definitions;
4 (2) collect statistical data from members, subscribers, or any other source;
5 (3) prepare and distribute pure premium rate data, adjusted for loss development and loss trending,
6 in accordance with its statistical plan. The data and adjustments must be in sufficient detail to permit
7 insurers to modify pure premiums based upon their own rating methods or interpretations of underlying
8 data.

9 (4) prepare and distribute manuals for rating rules and rating schedules that do not contain any
10 rules or schedules, including final rates, without information outside the manuals;

11 (5) distribute information that is filed with the commissioner and open to public inspection;

12 (6) conduct research and collect statistics in order to discover, identify, and classify information
13 relating to causes or prevention of losses;

14 (7) prepare and file policy forms and endorsements and consult with members, subscribers, and
15 others relative to their use and application;

16 (8) collect, compile, and distribute past and current prices of individual insurers, if the information
17 is made available to the general public;

18 (9) conduct research and collect information to determine the impact of benefit level changes on
19 pure premium rates;

20 (10) prepare and distribute rules and rating values for the uniform experience rating plan; and

21 (11) calculate and disseminate individual risk premium modification factors. **INDIVIDUAL RISK**
22 **PREMIUM MODIFICATION FACTORS MAY ONLY BE DISSEMINATED TO:**

23 **(A) A LICENSED PRODUCER OR A PLAN NO. 2 OR PLAN NO. 3 INSURER FOR THE BUSINESS OF**
24 **INSURANCE ONLY; AND**

25 **(B) THE DEPARTMENT OF LABOR AND INDUSTRY FOR REGULATORY PURPOSES ONLY.**
26 **INDIVIDUAL EMPLOYER PAYROLL AND LOSS INFORMATION MAY BE PROVIDED TO A PERSON OTHER**
27 **THAN THE CURRENT LICENSED PRODUCER OR A PLAN NO. 2 OR PLAN NO. 3 INSURER ONLY AFTER**
28 **OBTAINING THE EMPLOYER'S WRITTEN PERMISSION.**

29

30 **NEW SECTION. Section 16. Advisory organization -- prohibited activity.** In addition to other

1 prohibitions in this part, except as specifically permitted under [section ~~44~~ 15], an advisory organization
2 may not compile or distribute recommendations relating to rates that include expenses, other than loss
3 adjustment expenses, or profit.

4
5 **NEW SECTION. Section 17. Penalties -- suspension of license.** (1) The commissioner may impose
6 upon a person or organization that violates [sections 1 through ~~17~~ 18] a penalty of not more than \$500
7 for each violation.

8 (2) If the commissioner determines that the violation is willful, the commissioner may impose a
9 penalty of not more than \$1,000 for each violation in addition to any other penalty provided by law.

10 (3) The commissioner may suspend the license of an ~~advisory~~ insurer or **AN ADVISORY**
11 organization that fails to comply with any order within the time set by the order or extension granted by
12 the commissioner. The commissioner may not suspend a license for failure to comply with an order until
13 the time prescribed for appeal from the order has expired or, if appealed, until the order has been affirmed.
14 The commissioner may determine the period of a suspension, which remains in effect for the period unless
15 modified or rescinded or until the order upon which the suspension is based is modified, rescinded, or
16 reversed.

17 (4) Unless a consent decree has been entered, a penalty may not be imposed nor may a license
18 be suspended or revoked unless the commissioner, following a hearing, issues a written order with findings
19 of fact. The hearing must be held at least 10 days after written notice to the person or organization
20 specifying the alleged violation.

21 (5) A party aggrieved by an order or decision of the commissioner may, within 30 days after
22 receiving the commissioner's notice, make a written request for a hearing.

23
24 **NEW SECTION. Section 18. Appeals from commissioner.** (1) An order, decision, or act of the
25 commissioner under this part may be appealed to district court upon petition of a person aggrieved.

26 (2) A petition for review must be filed within 60 days from notice of the order, decision, or act.
27 The commencement of the proceeding does not affect enforcement or validity of the commissioner's action
28 unless the court determines, after notice to the commissioner, that a stay of enforcement until further
29 direction of the court will not injure the interests of the public.

30

1 **Section 19.** Section 33-16-303, MCA, is amended to read:

2 **"33-16-303. Use of rates, rating systems, underwriting rules, and policy or bond forms of rating**
 3 **or advisory organizations -- agreements to adhere to.** (1) Members and subscribers of rating or advisory
 4 organizations may use the rates, rating systems, underwriting rules, or policy or bond forms of ~~such~~ those
 5 organizations, either consistently or intermittently, but, except as provided in 33-16-105, 33-16-302,
 6 33-16-305, 33-16-307, and ~~33-16-1005 shall~~ sections 1 through 17 18], may not agree with each other
 7 or rating organizations or others to adhere ~~thereto~~ to the organizations' rates, systems, rules, policy, or
 8 bond forms.

9 (2) The fact that two or more admitted insurers, whether or not members or subscribers of a rating
 10 or advisory organization, use, either consistently or intermittently, the rates or rating systems made or
 11 adopted by a rating organization or the underwriting rules or policy or bond forms prepared by a rating or
 12 advisory organization ~~shall~~ is not be sufficient in itself to support a finding that an agreement ~~to so adhere~~
 13 prohibited under subsection (1) exists and may be used only for the purpose of supplementing or explaining
 14 direct evidence of the existence of any ~~such~~ agreement."

15

16 **SECTION 20. SECTION 33-16-403, MCA, IS AMENDED TO READ:**

17 **"33-16-403. Examination of application and investigation of applicant -- issuance of license -- fee.**

18 (1) The commissioner shall examine each application for license to act as a rating organization pursuant to
 19 this part or a workers' compensation advisory organization pursuant to part 10 and the documents filed
 20 ~~therewith~~ with the application and may make such further investigation of the applicant, its affairs, and its
 21 proposed plan of business as ~~he deems~~ the commissioner considers desirable.

22 (2) The commissioner shall issue the license applied for within 60 days of its filing ~~with him~~ if, from
 23 ~~such~~ the examination and investigation, ~~he~~ the commissioner is satisfied that:

24 (a) the business reputation of the applicant and its officers is good;

25 (b) the facilities of the applicant are adequate to enable it to furnish the services it proposes to
 26 furnish;

27 (c) the applicant and its proposed plan of operation conform to the requirements of this chapter.

28 (3) Otherwise, but only after hearing upon notice, the commissioner shall, in writing, deny the
 29 application and notify the applicant of ~~his~~ the decision and ~~his~~ the reasons therefor.

30 (4) The commissioner may grant an application in part only and issue a license to act as a rating

1 or workers' compensation advisory organization for one or more of the classes of insurance or subdivisions
 2 thereof or class of risk, or a part or combination thereof as are specified in the application, if the applicant
 3 qualifies for only a portion of the classes applied for.

4 (5) ~~Licenses~~ (a) Except as provided in subsection (5)(b), licenses issued pursuant to this section
 5 ~~shall~~ remain in effect until revoked as provided in this chapter. The fee for the license ~~shall be~~ is \$100
 6 annually ~~which shall~~ and must be deposited in the general fund.

7 (b) Each workers' compensation advisory organization is required to renew its license annually."
 8

9 **Section 21.** Section 33-16-1002, MCA, is amended to read:

10 **"33-16-1002. Applicability of part.** This part, together and in conjunction with parts 1 through 4
 11 of this chapter, applies to the making of premium rates for workers' compensation insurance issued under
 12 compensation plan No. 2 of the Workers' Compensation Act, Title 39, chapter 71, part 22, or related
 13 employer's liability insurance, but does not apply to reinsurance."
 14

15 **Section 22.** Section 33-16-1011, MCA, is amended to read:

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

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

19 (a) two representatives of private insurance carriers writing workers' compensation insurance in
 20 Montana. The members must be appointed by the Montana commissioner of insurance.

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

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

25 (d) one representative of an employer who is insured by either a private insurance carrier or the
 26 state compensation insurance fund, appointed by the commissioner of insurance.

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

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

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

5 (5) The committee must be staffed by the ~~rating advisory~~ organization designated under [section
 6 5] and be funded from the operations budget of the ~~rating advisory~~ organization. Committee members may,
 7 if they request, be paid their actual and necessary travel expenses.

8 (6) Documents and other information concerning the committee's actions must be made available
 9 for public review in the office of the commissioner of insurance."

10
 11 **Section 23.** Section 33-16-1012, MCA, is amended to read:

12 **"33-16-1012. Functions and powers of classification and rating committee -- hearings --**
 13 **rulemaking.** (1) The classification and rating committee shall:

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

15 (b) make the final determination regarding the establishment of all classifications;

16 ~~(c) establish the advisory premium rates as provided for in 33-16-1006;~~

17 ~~(d)~~(c) publish material and pamphlets as it considers appropriate;

18 ~~(e)~~(d) act as a review committee concerning objections filed by employers in relation to
 19 classifications assigned to the employer by an insurer; and

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

24 (2) (a) A hearing conducted by the committee pursuant to subsection ~~(1)(e)~~ (1)(d) must be an
 25 informal proceeding as provided in 2-4-604.

26 (b) A party aggrieved by a decision of the committee rendered after a hearing conducted pursuant
 27 to subsection (2)(a) may petition for judicial review of the decision pursuant to Title 2, chapter 4, part 7.

28 (3) The committee is subject to the provisions of Title 2, chapter 3, parts 1 and 2."
 29

30 **Section 24.** Section 39-71-435, MCA, is amended to read:

1 **"39-71-435. Workers' compensation and employers' liability insurance -- optional deductibles. (1)**

2 An insurer issuing a workers' compensation or an employer's liability insurance policy may offer to the
3 policyholder, as part of the policy or by endorsement, optional deductibles for benefits payable under the
4 policy consistent with the standards contained in subsection (3).

5 (2) ~~A rating~~ The advisory organization designated under [section 5] may develop and file a
6 deductible plan or plans on behalf of its members consistent with the standards contained in subsection
7 (3).

8 (3) The commissioner of insurance shall approve a deductible plan that is in accordance with the
9 following standards:

10 (a) Claimants' rights are properly protected and claimants' benefits are paid without regard to the
11 deductible.

12 (b) Premium reductions reflect the type and level of the deductible, consistent with accepted
13 actuarial standards.

14 (c) Premium reductions for deductibles are determined before application of any experience
15 modification, premium surcharge, or premium discount.

16 (d) Recognition is given to policyholder characteristics, including but not limited to size, financial
17 capabilities, nature of activities, and number of employees.

18 (e) The policyholder is liable to the insurer for the deductible amount in regard to benefits paid for
19 compensable claims.

20 (f) The insurer pays all of the deductible amount applicable to a compensable claim to the person
21 or provider entitled to benefits and then seeks reimbursement from the policyholder for the applicable
22 deductible amount.

23 (g) Failure by the policyholder to reimburse deductible amounts to the insurer is treated under the
24 policy as nonpayment of premium.

25 (h) Losses subject to the deductible must be reported and recorded as losses for purposes of
26 calculating rates for a policyholder on the same basis as losses under policies providing first dollar coverage.

27 (4) The state compensation insurance fund, plan No. 3, may adopt the plan filed by the
28 DESIGNATED ~~rating~~ advisory organization or adopt an optional deductible plan that meets the requirements
29 of this section.

30 (5) For purposes of 39-71-201, liability for assessments must be ascertained based on premiums

1 collected, in the case of policies written under plan No. 2, or on the assessment levied, in the case of
 2 policies written under plan No. 3, for which the policyholder would have been obligated without the
 3 deductible. For all other taxes and assessments based on premium, the amount of premium or assessment
 4 must be determined after application of the deductible."

5

6 **Section 25.** Section 39-71-2204, MCA, is amended to read:

7 **"39-71-2204. Insurer to submit notice of coverage within thirty days -- penalty for failure.** (1) The
 8 insurer shall, within 30 days after the issuance of the policy of workers' compensation insurance, submit
 9 to the department the notice of coverage stating the effective date of the policy insuring the employer and
 10 ~~such~~ other information ~~as~~ that may be required by the department.

11 (2) The department may:

12 (a) recognize the ~~national council on compensation insurance~~ advisory organization designated
 13 under [section 5] as an agent for authorized workers' compensation insurers in Montana; and

14 (b) under terms and conditions acceptable to the department, accept notice of coverage received
 15 from the ~~national council on compensation insurance~~ the advisory organization designated under [section
 16 5] as the insurer's notice of coverage.

17 (3) The department may, in its discretion, assess a penalty of no more than \$200 against an insurer
 18 that as a general business practice does not comply with the 30-day notice requirement set forth in
 19 subsection (1)."

20

21 **Section 26.** Section 39-71-2205, MCA, is amended to read:

22 **"39-71-2205. Policy in effect until canceled or replaced -- twenty-day notification of cancellation**
 23 **required -- penalty.** (1) The policy remains in effect until canceled, and cancellation may take effect only
 24 by written notice to the named insured and to the department at least 20 days prior to the date of
 25 cancellation. However, the policy terminates on the effective date of a replacement or succeeding workers'
 26 compensation insurance policy issued to the insured. Nothing in this section prevents an insurer from
 27 canceling a policy of workers' compensation insurance before a replacement policy is issued to the insured.

28 (2) The department may:

29 (a) recognize the ~~national council on compensation insurance~~ the advisory organization designated
 30 under [section 5] as an agent for authorized workers' compensation insurers in Montana; and

1 (b) under terms and conditions acceptable to the department, accept notice of cancellation received
 2 from ~~the national council on compensation insurance~~ the advisory organization, DESIGNATED UNDER
 3 [SECTION 5], as the insurer's notice of cancellation.

4 (3) (a) The department may assess a penalty of up to \$200 against an insurer that does not comply
 5 with the notice requirement in subsection (1).

6 (b) An insurer may contest the penalty assessment in a hearing conducted according to department
 7 rules."

8
 9 **Section 27.** Section 39-71-2211, MCA, is amended to read:

10 "**39-71-2211. Premium rates for construction industry -- filing required.** (1) With respect to each
 11 classification of risk in the construction industry under plan No. 2, the ~~rating organization described in~~
 12 ~~33-16-1005~~ advisory organization designated under [section 5] shall file with the commissioner of insurance
 13 a method of computing premiums that does not impose a higher insurance premium solely because of an
 14 employer's higher rate of wages paid.

15 (2) The commissioner shall accept a filing under subsection (1) that includes a reasonable method
 16 of recognizing differences in rates of pay. This method must use a credit scale with the starting point set
 17 at one and one-half times the Montana average weekly wage as reported by the department.

18 (3) The ~~rating~~ advisory organization shall file a revenue neutral plan for new and renewed policies
 19 ~~by July 1, 1992,~~ for prompt and orderly transition to a method of computing premiums that is in compliance
 20 with the requirements of this section.

21 (4) The state compensation insurance fund, plan No. 3, shall adopt the plan filed by the
 22 DESIGNATED ~~rating~~ advisory organization or adopt a credit scale plan that meets the requirements of this
 23 section."

24
 25 **Section 28.** Section 39-71-2316, MCA, is amended to read:

26 "**39-71-2316. Powers of the state fund.** For the purposes of carrying out its functions, the state
 27 fund may:

28 (1) insure any employer for workers' compensation and occupational disease liability as the
 29 coverage is required by the laws of this state. The state fund may charge a minimum yearly premium to
 30 cover its administrative costs for coverage of a small employer.

- 1 (2) sue and be sued;
- 2 (3) except as provided in section 21, Chapter 4, Special Laws of May 1990, enter into contracts
3 relating to the administration of the state fund, including claims management, servicing, and payment;
- 4 (4) collect and disburse money received;
- 5 (5) adopt classifications and charge premiums for the classifications so that the state fund will be
6 neither more nor less than self-supporting. Premium rates for classifications may only be adopted and
7 changed using a process, a procedure, formulas, and factors set forth in rules adopted under Title 2,
8 chapter 4, parts 2 through 4. After ~~such~~ the rules have been adopted, the state fund need not follow the
9 rulemaking provisions of Title 2, chapter 4, when changing classifications and premium rates. The
10 contested case rights and provisions of Title 2, chapter 4, do not apply to an employer's classification or
11 premium rate. The state fund ~~must~~ is required to belong to ~~the national council on compensation insurance~~
12 the A LICENSED WORKERS' COMPENSATION advisory organization designated by the commissioner of
13 insurance under (section 5) OR A LICENSED WORKERS' COMPENSATION RATING ORGANIZATION UNDER
14 TITLE 33, CHAPTER 16, PART 4, and shall may use the classifications of employment ~~uniform classification~~
15 system and experience rating plan CLASSIFICATIONS OF EMPLOYMENT adopted by the ~~national council~~
16 and corresponding rates DESIGNATED WORKERS' COMPENSATION advisory organization, AS PROVIDED
17 IN TITLE 33, CHAPTER 16, PART 10, AND CORRESPONDING RATES as a basis for setting its own rates.
18 EXCEPT AS PROVIDED IN TITLE 33, CHAPTER 16, PART 10, A WORKERS' COMPENSATION ADVISORY
19 ORGANIZATION OR OTHER PERSON MAY NOT, WITHOUT FIRST OBTAINING THE WRITTEN PERMISSION
20 OF THE EMPLOYER, USE, SELL, OR DISTRIBUTE AN EMPLOYER'S SPECIFIC PAYROLL OR LOSS
21 INFORMATION, INCLUDING BUT NOT LIMITED TO EXPERIENCE MODIFICATION FACTORS.
- 22 (6) pay the amounts determined due under a policy of insurance issued by the state fund;
- 23 (7) hire personnel;
- 24 (8) declare dividends if there is an excess of assets over liabilities. However, dividends may not
25 be paid until adequate actuarially determined reserves are set aside. If those reserves have been set aside,
26 money that can be declared as a dividend must be transferred to the account created by 39-71-2321 for
27 claims for injuries resulting from accidents that occurred before July 1, 1990, and used for the purposes
28 of that account. After all claims funded by that account have been paid, dividends may be declared and
29 paid to insureds.
- 30 (9) perform all functions and exercise all powers of a private insurance carrier that are necessary,

1 appropriate, or convenient for the administration of the state fund.”

2
3 NEW SECTION. Section 29. Repealer. Sections 33-16-1004 and 33-16-1005, MCA, are repealed.

4
5 NEW SECTION. Section 30. Coordination. If [this act] is passed and approved and if it amends
6 39-71-2316, then Senate Bill No. 21 is void.

7
8 NEW SECTION. Section 31. Codification instruction. [Sections 1 through ~~47~~ 18] are intended to
9 be codified as an integral part of Title 33, chapter 16, part 10, and the provisions of Title 33, chapter 16,
10 part 10, apply to [sections 1 through ~~47~~ 18].

11
12 NEW SECTION. Section 32. Saving clause. [This act] does not affect rights and duties that
13 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this
14 act].

15
16 NEW SECTION. Section 33. Severability. If a part of [this act] is invalid, all valid parts that are
17 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
18 applications, the part remains in effect in all valid applications that are severable from the invalid
19 applications.

20
21 NEW SECTION. Section 34. Applicability. [This act] applies to rate filings by the advisory
22 organization on or after [the effective date of this act] and to rates filed by insurers on or after the effective
23 date of the advisory organization’s initially approved loss cost filing.

24 -END-