

SENATE BILL NO. 405

INTRODUCED BY

Jacobson, Frankel, Cantlett, Doherty, Halligan, Weyer, Shea, Wilson

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING VOLUNTARY PURCHASING POOLS FOR THE PURCHASE OF HEALTH INSURANCE; PROVIDING FOR AN INITIAL SINGLE PURCHASING POOL; PROVIDING FOR APPLICATION PROCEDURES; PROVIDING FOR CERTIFICATION AND REGULATION OF PURCHASING POOLS BY THE COMMISSIONER OF INSURANCE; PROVIDING QUALIFICATIONS AND REQUIREMENTS FOR OPERATION OF AND REPORTING BY PURCHASING POOLS; ESTABLISHING RIGHTS FOR EXISTING PURCHASING POOLS; ALLOWING THE DEVELOPMENT AND IMPOSITION OF RISK ADJUSTMENT; PROVIDING ENFORCEMENT PROVISIONS; PROVIDING RULEMAKING AUTHORITY; AND AMENDING SECTION 33-22-501, MCA."

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 12] gives the commissioner of insurance authority to adopt administrative rules. [Section 3] requires rules for establishing procedures for forms and applications for certification of purchasing pools and for conditions attached to certification or for waivers of restrictions on certification. [Section 4] requires rules to develop criteria for determining when and under what conditions additional purchasing pools must be established. [Section 7] requires rules for determining allowable premium rating differences, and [section 10] requires rules for developing a method of risk adjustment.

It is the intent of the legislature to authorize the establishment of private, voluntary purchasing pools to provide health coverage for small employers and individuals throughout the state in order to realize the advantages that large employers enjoy in purchasing health care coverage by providing an opportunity to pool funds and resources and to improve the quality, access, and affordability of health care.

By negotiating for health care coverage collectively, the legislature recognizes that small employer and individual purchasers could command a sufficient market share to induce health plans to be more responsive to the purchasers' particular needs and to pass on some of the economies of scale that result from centralization of marketing, enrollment, and premium collection. In particular, centralization may lower administrative costs that currently represent a large portion of the premium paid by small employer and individual purchasers. Competition among health plans seeking to capture more of this market may also

1 improve the efficiency of health care delivery.

2 The legislature further recognizes that purchasers of health insurance coverage through the pool
3 would realize a greater choice of health plans, which is an increasingly important advantage as more health
4 plans limit the patient's choice of providers to those who are included in the plan's network. People who
5 move from job to job could also maintain enrollment in the same plan if the former and new employers
6 purchase coverage through the same pool.

7 Finally, the legislature recognizes that the potential benefits of a purchasing pool can be realized
8 only if the purchasing pool is appropriately structured and only if the rules that govern the sale of health
9 care coverage for small group and individual markets ensure that competition is fair and that the purchasing
10 pool does not become a coverage source of last resort for people with high medical risks.

11

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

13

14 **Section 1.** Section 33-22-501, MCA, is amended to read:

15 **"33-22-501. Group disability insurance defined -- eligible groups.** Group disability insurance is
16 ~~hereby declared to be~~ that form of disability insurance covering groups of persons as defined ~~below~~ in this
17 section, with or without one or more members of their families or one or more of their dependents, or
18 covering one or more members of the families or one or more dependents of ~~such~~ the groups of persons
19 and issued upon the following bases:

20 (1) under a policy issued to an employer or trustees of a fund established by an employer, who
21 ~~shall be deemed~~ is considered to be the policyholder, insuring employees of ~~such~~ the employer for the
22 benefit of persons other than the employer. The term "employees" as used ~~herein shall be deemed to~~
23 ~~include~~ in this subsection includes the officers, managers, and employees of the employer, the individual
24 proprietor or partner if the employer is an individual proprietor or partnership, the officers, managers, and
25 employees of subsidiary or affiliated corporations, and the individual proprietors, partners, and employees
26 of individuals and firms, if the business of the employer and ~~such~~ the individual or firm is under common
27 control through stock ownership, contract, or otherwise. The term "employees" as used ~~herein~~ in this
28 subsection may include retired employees. A policy issued to insure employees of a public body may
29 provide that the term "employees" ~~shall include~~ includes elected or appointed officials. The policy may
30 provide that the term "employees" ~~shall include~~ includes the trustees or their employees, or both, if their

1 duties are principally connected with such trusteeship.

2 (2) under a policy issued to an association, including a labor union, which shall have a constitution
3 and bylaws and which has been organized and is maintained in good faith for purposes other than that of
4 obtaining insurance, insuring members, employees, or employees of members of the association for the
5 benefit of persons other than the association or its officers or trustees. The term "employees" as used
6 ~~herein~~ in this subsection may include retired employees.

7 (3) under a policy issued to the trustees of a fund established by two or more employers in the
8 same or related industry ~~or~~, by one or more labor unions, ~~or~~ by one or more employers and one or more
9 labor unions, ~~or~~ by an association, ~~as defined in subsection (2) above, in which the trustees shall be~~
10 ~~deemed~~ are considered the policyholder, to insure employees of the employers or members of the unions
11 or of ~~such the~~ the association or employees of members of ~~such the~~ the association for the benefit of persons other
12 than the employers or the unions or ~~such the~~ the association. The term "employees" as used ~~herein~~ in this
13 subsection may include the officers, managers, and employees of the employer and the individual proprietor
14 or partners if the employer is an individual proprietor or partnership. The term "employees" as used ~~herein~~
15 in this subsection may include retired employees. The policy may provide that the term "employees" ~~shall~~
16 ~~include~~ includes the trustees or their employees, or both, if their duties are principally connected with ~~such~~
17 the trusteeship.

18 (4) under a policy issued to any person or organization to which a policy of group life insurance
19 may be issued or delivered in this state to insure any class or classes of individuals that could be insured
20 under ~~such a~~ a group life policy;

21 (5) under a policy issued to a member of a voluntary purchasing pool that is formed solely for the
22 purpose of obtaining insurance as provided in [sections 2 through 12];

23 (6) under a policy issued to cover any other substantially similar group ~~which that~~, in the discretion
24 of the commissioner, may be subject to the issuance of a group disability policy or contract."
25

26 NEW SECTION. Section 2. Definitions. As used in [sections 2 through 12], the following
27 definitions apply:

28 (1) "Employer group" means the employer, employees, and eligible dependents seeking coverage
29 by a health plan through a purchasing pool.

30 (2) "Geographic service area" means the area for which a purchasing pool is certified to provide

1 service. The area may be specified as the entire state, by county, or by municipality.

2 (3) "Health plan" means a policy, subscriber contract, or certificate of insurance issued or issued
3 for delivery in Montana or a contract that provides coverage to a resident of this state for disability
4 insurance as benefits provided for in 33-1-207.

5
6 **NEW SECTION. Section 3. Commissioner power and duties -- application for certification.** (1) The
7 commissioner shall, by rule, develop procedures and forms for application by an organization for
8 certification as a purchasing pool.

9 (2) An organization seeking to be certified as a purchasing pool shall make an application to the
10 commissioner.

11 (3) Subject to the provisions of [section 4], the commissioner shall certify organizations as
12 voluntary purchasing pools upon proof of fulfillment of the qualifications provided in [section 5].

13 (4) Subject to the provisions of [section 4], the commissioner may limit the number of purchasing
14 pools licensed within a geographic service area. An applicant for certification shall demonstrate:

15 (a) reasons for probable success in representing a substantial share of the purchasers within a
16 proposed geographic service area; and

17 (b) that it is likely to represent purchasers already served by existing purchasing pools within the
18 same or a similar geographic service area.

19 (5) The commissioner shall, by rule, develop additional conditions that may be placed upon a
20 certificate of a purchasing pool to protect the interests of the consumers, to ensure fair and efficient
21 conduct of purchasing pool duties, and to protect purchasing pools from adverse selection or from bearing
22 any insurance risk. The rules must state the circumstances that warrant the imposition of the condition.

23 (6) The commissioner shall, by rule, develop additional conditions or waivers of restrictions that
24 may be attached to a certificate in order to facilitate the orderly market transition upon proof of necessity
25 by the applicant purchasing pool or by the commissioner. The conditions or waivers must include a specific
26 time period for which they are imposed.

27 (7) The commissioner shall conduct financial and performance audits or examinations of the
28 purchasing pool on a regular basis.

29 (8) The change in control, merger, or acquisition of a purchasing pool is subject to prior review and
30 approval of the commissioner on the same terms as a change in control, merger, or acquisition of a

1 domestic insurer.

2

3 **NEW SECTION. Section 4. Initial certification of single purchasing pool -- development of**
4 **conditions for additional purchasing pools.** Initially, the commissioner shall certify a single purchasing pool
5 from among the applicants that apply within a period specified by rule. The commissioner shall regularly
6 review the situation to determine whether the objectives for purchasing pools may be better served by
7 establishing one or more additional pools. The commissioner shall develop, by rule, criteria to provide
8 guidance for determining when and under what conditions additional purchasing pools must be established.
9 The criteria must take into consideration factors such as the levels of enrollment and market share; the
10 effect of additional purchasing pools on economies of scale, cost containment, and risk fragmentation; the
11 need for competition; and the provision of service to various regions of the state.

12

13 **NEW SECTION. Section 5. Qualifications for certification as voluntary purchasing pool.** (1) A
14 purchasing pool may be certified upon compliance with the provisions of subsection (2).

15 (2) The purchasing pool:

16 (a) must contain at least 1,000 eligible individuals;

17 (b) shall establish requirements for membership, in addition to criteria developed by the
18 commissioner. However, the purchasing pool may not exclude any individual or employer group that
19 otherwise meets the requirements for membership on the basis of health status or claim experience, or
20 occupational group.

21 (c) shall hold an open enrollment period annually, for a period not to exceed 30 continuous calendar
22 days, during which new individuals and employer groups can join the voluntary purchasing pool;

23 (d) shall allow eligible individuals and employer groups, upon initial enrollment and during
24 subsequent enrollment periods, to choose among health plans offered through the purchasing pool.
25 Individuals or employer groups that are covered by a health plan offered through a purchasing pool that
26 requires an enrollment period in excess of 1 year are eligible to choose among available plans upon the
27 completion of the enrollment period.

28 (e) may not assume any risk or form self-insurance plans among its members;

29 (f) may not act as an agent or engage in any activities for which an insurance agent's license is
30 required. An insurer is exempt from any law of the state that prohibits providing or offering to provide to

1 a purchasing pool or to its members advantages based upon their loss and expense experience that are not
2 offered to other persons with respect to rates, policy forms, coverage, or other matters.

3 (g) must be incorporated as a private not-for-profit entity;

4 (h) must have a governing board composed of purchasers with a balanced representation of
5 consumers and employers;

6 (i) shall prepare a business plan for approval by the commissioner with a detailed, written plan of
7 operations explaining how the proposed purchasing pool intends to meet the public policy objectives of
8 reduced cost, increased access, and improved quality. If approved, the business plan is considered a
9 written commitment by the purchasing pool. Material changes in policy or operations are subject to the
10 prior approval of the commissioner on the same basis as the original business plan.

11 (j) may not negotiate for the purchase of disability insurance policies or contracts until the
12 commissioner has approved the business plan.

13
14 **NEW SECTION. Section 6. Requirements for operation of purchasing pools.** (1) At the discretion
15 of the purchasing pool, premiums for health plans may be paid by the voluntary purchasing pool, by
16 member employer groups and individuals, or by eligible employees and individuals.

17 (2) Participation in the purchasing pool must be open to individuals or to employer groups in the
18 public and private sectors. Separate premium structures are allowed for individuals, employer groups
19 containing 2 to 100 employees, and employer groups containing over 100 employees.

20 (3) The purchasing pool shall actively negotiate and contract with health plans regarding price,
21 efficiency, quality of care, and service to underserved groups and areas.

22 (4) The purchasing pool shall, at least annually, offer an opportunity to participants to change
23 health plans.

24 (5) The purchasing pool shall provide information, including the cost and quality of risk
25 management services on the health plans offered, in order to assist the participants in making informed
26 decisions in the selection of health plans.

27
28 **NEW SECTION. Section 7. Premium rating.** (1) The health plans purchased through a purchasing
29 pool must use one of the following rating arrangements:

30 (a) Health plans that rate each member employer group and each individual separately are subject

1 to the laws governing small employer health insurance.

2 (b) Health plans that rate the entire group as a whole must provide for charges for each insured
3 individual or employer group based on a community rate within the common group, adjusted for case
4 characteristics as permitted by the laws governing group disability insurance.

5 (2) The commissioner shall adopt rules for determining the allowed premium variation in health
6 plans offered through a purchasing pool.

7 (3) Premium rating differences for health plans offered through the purchasing pool may be based
8 only on age; geography; benefit plan design, including cost sharing; and the type of family composition
9 covered by the health plan, such as individual, individual and spouse, individual and children, or individual,
10 spouse, and children. Limited discounts may be allowed for healthful lifestyles.

11

12 **NEW SECTION. Section 8. Purchasing pool reporting requirements.** (1) The purchasing pool shall
13 provide quarterly financial statements and annual reports on forms approved by the commissioner. The
14 commissioner shall review the reports to ensure that:

15 (a) the operation of the purchasing pool is fiscally sound;

16 (b) the purchasing pool is not bearing any risk; and

17 (c) sound financial controls and money management are being used by the purchasing pool.

18 (2) The purchasing pool shall disclose its total administrative cost in an annual report to the
19 commissioner in the same manner and on the same basis as insurers.

20 (3) The purchasing pool shall report any material changes in the business plan or its operation prior
21 to implementation.

22 (4) The purchasing pool shall provide other information requested by the commissioner that is
23 considered pertinent to the operation of the purchasing pool. Certain issues, such as the specifics of a
24 business plan, market conditions, or enforcement, may make it necessary to gather additional information.

25

26 **NEW SECTION. Section 9. Rights of existing purchasing pools.** (1) Upon application by an
27 organization for certification as a purchasing pool, the commissioner shall notify existing certified
28 purchasing pools operating in the geographic service area that the applicant organization plans to serve.

29 (2) Existing certified purchasing pools shall file a notice of intent to submit evidence as provided
30 in subsections (4) and (5) within 10 days of notification.

1 (3) The commissioner shall hold a hearing regarding an application for certification of a purchasing
2 pool if an existing certified purchasing pool in the geographic service area that the applicant intends to
3 serve files a notice of intent to submit evidence.

4 (4) Existing certified purchasing pools may present evidence at the hearing regarding the
5 anticipated impact of a new purchasing pool within the geographic service area of the certified purchasing
6 pool.

7 (5) The evidence may include information regarding the potential risk selection by the applicant
8 organization that may adversely affect the certified purchasing pool and regarding the potential dilution of
9 the market leverage of the certified purchasing pool.

10
11 **NEW SECTION. Section 10. Risk adjustment.** The commissioner may, by rule, develop and impose
12 a method of risk adjustment between purchasing pools within a geographic service area or between all
13 purchasing pools to ensure competition based upon service, effective cost, and quality control and not
14 based on risk selection.

15
16 **NEW SECTION. Section 11. Enforcement.** (1) The commissioner may revoke certification of,
17 attach conditions to the certification of, or initiate other action as appropriate against a purchasing pool that
18 fails to meet the requirements in [sections 5 through 8] as evidenced by annual reports, financial
19 statements, and financial and performance audits.

20 (2) Failure to meet minimum standards in a financial or performance audit or examination is a basis
21 for a suspension or revocation of certification.

22 (3) The commissioner may impose conditions on certification, including but not limited to the
23 removal and replacement of management, marketing staff, or contractors, to remedy compliance or
24 performance problems.

25 (4) An action for revoking, suspending, or attaching conditions to a certification of a purchasing
26 pool must be accomplished in accordance with the provisions of the Montana Administrative Procedure Act.

27 (5) In the event that a purchasing pool becomes insolvent, the commissioner shall maintain
28 jurisdiction of the purchasing pool for the purposes of protecting the interests of the purchasing pool
29 participants, the insurers, and the health plans.

30

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0405, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act authorizing voluntary purchasing pools for the purchase of health insurance; providing for an initial single purchasing pool; providing for application procedures; providing for certification and regulation of purchasing pools by the Commissioner of Insurance.

ASSUMPTIONS:

1. The commissioner will be required to adopt six sets of rules that will total 100 pages. This will be accomplished in two phases which will require two hearings. Drafting the revision of the rules will require a person knowledgeable in purchasing pools.
2. The office will have to review and approve an initial application for a pool and review quarterly financial statements. Review will be conducted by existing financial examination staff.
3. If new employers obtain insurance through the pool an increased workload will be placed on policy holder services which takes complaints from insurance consumers. It is impossible to estimate the amount of potential workload from these complaints.
4. The State Auditor's office will require a new 1.00 FTE (grade 16) to write, present and adopt rules, review and certify applications, supervise review of reports, and provide enforcement, if necessary. In addition to the normal operating expenses and equipment, sufficient funds are provided for two hearings (\$5,000), and filing of 100 pages of rules (\$3,500).

FISCAL IMPACT:

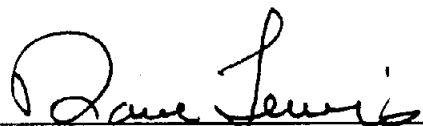
State Auditor:

Expenditures:

	<u>FY96</u>	<u>FY97</u>
	<u>Difference</u>	<u>Difference</u>
FTE	0.75	1.00
Personal Services	28,300	37,700
Operating Costs	9,900	1,400
Equipment	<u>2,300</u>	<u>0</u>
Total	40,500	39,100

Funding:

General fund (01) 40,500 39,100

 2-20-95

DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

JUDY JACOBSON, PRIMARY SPONSOR DATE

Fiscal Note for SB0405, as introduced

SB 405

SENATE BILL NO. 405

INTRODUCED BY JACOBSON, FRANKLIN, BARTLETT, DOHERTY, HALLIGAN, WYATT, SHEA, WILSON

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STATEMENT OF INTENT

A statement of intent is required for this bill because [section 12] gives the commissioner of insurance authority to adopt administrative rules. [Section 3] requires rules for establishing procedures for forms and applications for certification of purchasing pools and for conditions attached to certification or for waivers of restrictions on certification. [Section 4] requires rules to develop criteria for determining when and under what conditions ~~additional~~ purchasing pools must be established. [Section 7] requires rules for determining allowable premium rating differences, and [section 10] requires rules for developing a method of risk adjustment.

It is the intent of the legislature to authorize the establishment of private, voluntary purchasing pools to provide health coverage for small employers and individuals throughout the state in order to realize the advantages that large employers enjoy in purchasing health care coverage by providing an opportunity to pool funds and resources and to improve the quality, access, and affordability of health care.

By negotiating for health care coverage collectively, the legislature recognizes that small employer and individual purchasers could command a sufficient market share to induce health plans to be more responsive to the purchasers' particular needs and to pass on some of the economies of scale that result from centralization of marketing, enrollment, and premium collection. In particular, centralization may lower administrative costs that currently represent a large portion of the premium paid by small employer and

1 individual purchasers. Competition among health plans seeking to capture more of this market may also
2 improve the efficiency of health care delivery.

3 The legislature further recognizes that purchasers of health insurance coverage through the pool
4 would realize a greater choice of health plans, which is an increasingly important advantage as more health
5 plans limit the patient's choice of providers to those who are included in the plan's network. People who
6 move from job to job could also maintain enrollment in the same plan if the former and new employers
7 purchase coverage through the same pool.

8 Finally, the legislature recognizes that the potential benefits of a purchasing pool can be realized
9 only if the purchasing pool is appropriately structured and only if the rules that govern the sale of health
10 care coverage for small group and individual markets ensure that competition is fair and that the purchasing
11 pool does not become a coverage source of last resort for people with high medical risks.

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

14

15 **Section 1.** Section 33-22-501, MCA, is amended to read:

16 **"33-22-501. Group disability insurance defined -- eligible groups.** Group disability insurance is
17 ~~hereby declared to be~~ that form of disability insurance covering groups of persons as defined ~~below in this~~
18 section, with or without one or more members of their families or one or more of their dependents, or
19 covering one or more members of the families or one or more dependents of ~~such the~~ groups of persons
20 and issued upon the following bases:

21 (1) under a policy issued to an employer or trustees of a fund established by an employer, who
22 ~~shall be deemed~~ is considered to be the policyholder, insuring employees of ~~such the~~ employer for the
23 benefit of persons other than the employer. The term "employees" as used ~~herein shall be deemed to~~
24 ~~include in this subsection includes~~ the officers, managers, and employees of the employer, the individual
25 proprietor or partner if the employer is an individual proprietor or partnership, the officers, managers, and
26 employees of subsidiary or affiliated corporations, and the individual proprietors, partners, and employees
27 of individuals and firms, if the business of the employer and ~~such the~~ individual or firm is under common
28 control through stock ownership, contract, or otherwise. The term "employees" as used ~~herein in this~~
29 subsection may include retired employees. A policy issued to insure employees of a public body may
30 provide that the term "employees" ~~shall include~~ includes elected or appointed officials. The policy may

1 provide that the term "employees" ~~shall include~~ includes the trustees or their employees, or both, if their
 2 duties are principally connected with such trusteeship.

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 10 labor unions, or by an association, as defined in subsection (2) ~~above~~, in which the trustees shall be
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 13 than the employers or the unions or ~~such the~~ the association. The term "employees" as used ~~herein~~ in this
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 15 or partners if the employer is an individual proprietor or partnership. The term "employees" as used ~~herein~~
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 21 under ~~such a~~ a group life policy;

22 (5) under a policy issued to a member of a voluntary purchasing pool that is formed solely for the
 23 purpose of obtaining insurance as provided in [sections 2 through 12];

24 (6) under a policy issued to cover any other substantially similar group ~~which that~~, in the discretion
 25 of the commissioner, may be subject to the issuance of a group disability policy or contract."

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27 **NEW SECTION.** **Section 2. Definitions.** As used in [sections 2 through 12], the following
 28 definitions apply:

29 (1) "Employer group" means the employer, employees, and eligible dependents seeking coverage
 30 by a health plan through a purchasing pool.

1 (2) "Geographic service area" means the area for which a purchasing pool is certified to provide
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8 commissioner shall, by rule, develop procedures and forms for application by an organization for
9 certification as a purchasing pool.

10 (2) An organization seeking to be certified as a purchasing pool shall make an application to the
11 commissioner.

12 (3) Subject to the provisions of [section 4], the commissioner shall certify organizations as
13 voluntary purchasing pools upon proof of fulfillment of the qualifications provided in [section 5].

14 (4) Subject to the provisions of [section 4], the commissioner may limit the number of purchasing
15 pools licensed within a geographic service area. An applicant for certification shall demonstrate:

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29 purchasing pool on a regular basis.

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4 **NEW SECTION. Section 4. Initial certification CERTIFICATION of single purchasing pool POOLS**
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12 risk fragmentation; the need for competition; and the provision of service to various regions of the state.

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14 **NEW SECTION. Section 5. Qualifications for certification as voluntary purchasing pool.** (1) A
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18 (c) sound financial controls and money management are being used by the purchasing pool.

19 (2) The purchasing pool shall disclose its total administrative cost in an annual report to the
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21 (3) The purchasing pool shall report any material changes in the business plan or its operation prior
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24 considered pertinent to the operation of the purchasing pool. Certain issues, such as the specifics of a
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2 (3) The commissioner shall hold a hearing regarding an application for certification of a purchasing
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5 (4) Existing certified purchasing pools may present evidence at the hearing regarding the
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9 organization that may adversely affect the certified purchasing pool and regarding the potential dilution of
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12 **NEW SECTION. Section 10. Risk adjustment.** The commissioner may, by rule, develop and impose
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14 purchasing pools to ensure competition based upon service, effective cost, and quality control and not
15 based on risk selection.

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17 **NEW SECTION. Section 11. Enforcement.** (1) The commissioner may revoke certification of,
18 attach conditions to the certification of, or initiate other action as appropriate against a purchasing pool that
19 fails to meet the requirements in [sections 5 through 8] as evidenced by annual reports, financial
20 statements, and financial and performance audits.

21 (2) Failure to meet minimum standards in a financial or performance audit or examination is a basis
22 for a suspension or revocation of certification.

23 (3) The commissioner may impose conditions on certification, including but not limited to the
24 removal and replacement of management, marketing staff, or contractors, to remedy compliance or
25 performance problems.

26 (4) An action for revoking, suspending, or attaching conditions to a certification of a purchasing
27 pool must be accomplished in accordance with the provisions of the Montana Administrative Procedure Act.

28 (5) In the event that a purchasing pool becomes insolvent, the commissioner shall maintain
29 jurisdiction of the purchasing pool for the purposes of protecting the interests of the purchasing pool
30 participants, the insurers, and the health plans.

1 SENATE BILL NO. 405

2 INTRODUCED BY JACOBSON, FRANKLIN, BARTLETT, DOHERTY, HALLIGAN, WYATT, SHEA, WILSON

3
4
5 A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING VOLUNTARY PURCHASING POOLS FOR THE
6 PURCHASE OF HEALTH INSURANCE; ~~PROVIDING FOR AN INITIAL SINGLE PURCHASING POOL;~~
7 PROVIDING FOR APPLICATION PROCEDURES; PROVIDING FOR CERTIFICATION AND REGULATION OF
8 PURCHASING POOLS BY THE COMMISSIONER OF INSURANCE; PROVIDING QUALIFICATIONS AND
9 REQUIREMENTS FOR OPERATION OF AND REPORTING BY PURCHASING POOLS; ESTABLISHING RIGHTS
10 FOR EXISTING PURCHASING POOLS; ALLOWING THE DEVELOPMENT AND IMPOSITION OF RISK
11 ADJUSTMENT; PROVIDING ENFORCEMENT PROVISIONS; PROVIDING RULEMAKING AUTHORITY; AND
12 AMENDING SECTION 33-22-501, MCA."

13
14 STATEMENT OF INTENT

15 A statement of intent is required for this bill because [section 12] gives the commissioner of
16 insurance authority to adopt administrative rules. [Section 3] requires rules for establishing procedures for
17 forms and applications for certification of purchasing pools and for conditions attached to certification or
18 for waivers of restrictions on certification. [Section 4] requires rules to develop criteria for determining
19 when and under what conditions ~~additional~~ purchasing pools must be established. [Section 7] requires rules
20 for determining allowable premium rating differences, and [section 10] requires rules for developing a
21 method of risk adjustment.

22 It is the intent of the legislature to authorize the establishment of private, voluntary purchasing
23 pools to provide health coverage for small employers and individuals throughout the state in order to realize
24 the advantages that large employers enjoy in purchasing health care coverage by providing an opportunity
25 to pool funds and resources and to improve the quality, access, and affordability of health care.

26 By negotiating for health care coverage collectively, the legislature recognizes that small employer
27 and individual purchasers could command a sufficient market share to induce health plans to be more
28 responsive to the purchasers' particular needs and to pass on some of the economies of scale that result
29 from centralization of marketing, enrollment, and premium collection. In particular, centralization may lower
30 administrative costs that currently represent a large portion of the premium paid by small employer and

1 individual purchasers. Competition among health plans seeking to capture more of this market may also
2 improve the efficiency of health care delivery.

3 The legislature further recognizes that purchasers of health insurance coverage through the pool
4 would realize a greater choice of health plans, which is an increasingly important advantage as more health
5 plans limit the patient's choice of providers to those who are included in the plan's network. People who
6 move from job to job could also maintain enrollment in the same plan if the former and new employers
7 purchase coverage through the same pool.

8 Finally, the legislature recognizes that the potential benefits of a purchasing pool can be realized
9 only if the purchasing pool is appropriately structured and only if the rules that govern the sale of health
10 care coverage for small group and individual markets ensure that competition is fair and that the purchasing
11 pool does not become a coverage source of last resort for people with high medical risks.

12

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

14

15 Section 1. Section 33-22-501, MCA, is amended to read:

16 "33-22-501. Group disability insurance defined -- eligible groups. Group disability insurance is
17 hereby declared to be that form of disability insurance covering groups of persons as defined ~~below~~ in this
18 section, with or without one or more members of their families or one or more of their dependents, or
19 covering one or more members of the families or one or more dependents of ~~such~~ the groups of persons
20 and issued upon the following bases:

21 (1) under a policy issued to an employer or trustees of a fund established by an employer, who
22 ~~shall be deemed~~ is considered to be the policyholder, insuring employees of ~~such~~ the employer for the
23 benefit of persons other than the employer. The term "employees" as used ~~herein~~ shall be deemed to
24 include in this subsection includes the officers, managers, and employees of the employer, the individual
25 proprietor or partner if the employer is an individual proprietor or partnership, the officers, managers, and
26 employees of subsidiary or affiliated corporations, and the individual proprietors, partners, and employees
27 of individuals and firms, if the business of the employer and ~~such~~ the individual or firm is under common
28 control through stock ownership, contract, or otherwise. The term "employees" as used ~~herein~~ in this
29 subsection may include retired employees. A policy issued to insure employees of a public body may
30 provide that the term "employees" ~~shall include~~ includes elected or appointed officials. The policy may

1 provide that the term "employees" ~~shall include~~ includes the trustees or their employees, or both, if their
2 duties are principally connected with such trusteeship.

3 (2) under a policy issued to an association, including a labor union, which shall have a constitution
4 and bylaws and which has been organized and is maintained in good faith for purposes other than that of
5 obtaining insurance, insuring members, employees, or employees of members of the association for the
6 benefit of persons other than the association or its officers or trustees. The term "employees" as used
7 ~~herein in this subsection~~ may include retired employees.

8 (3) under a policy issued to the trustees of a fund established by two or more employers in the
9 same or related industry ~~or~~, by one or more labor unions, ~~or~~ by one or more employers and one or more
10 labor unions, or by an association, as defined in subsection (2) ~~above, in which the trustees shall be~~
11 ~~deemed~~ are considered the policyholder, to insure employees of the employers or members of the unions
12 or of ~~such the~~ the association or employees of members of ~~such the~~ the association for the benefit of persons other
13 than the employers or the unions or ~~such the~~ the association. The term "employees" as used ~~herein in this~~
14 subsection may include the officers, managers, and employees of the employer and the individual proprietor
15 or partners if the employer is an individual proprietor or partnership. The term "employees" as used ~~herein~~
16 in this subsection may include retired employees. The policy may provide that the term "employees" ~~shall~~
17 ~~include~~ includes the trustees or their employees, or both, if their duties are principally connected with ~~such~~
18 the trusteeship.

19 (4) under a policy issued to any person or organization to which a policy of group life insurance
20 may be issued or delivered in this state to insure any class or classes of individuals that could be insured
21 under ~~such a~~ a group life policy;

22 (5) under a policy issued to a member of a voluntary purchasing pool that is formed solely for the
23 purpose of obtaining insurance as provided in [sections 2 through 12];

24 (6) under a policy issued to cover any other substantially similar group ~~which that~~, in the discretion
25 of the commissioner, may be subject to the issuance of a group disability policy or contract."
26

27 **NEW SECTION.** **Section 2. Definitions.** As used in [sections 2 through 12], the following
28 definitions apply:

29 (1) "Employer group" means the employer, employees, and eligible dependents seeking coverage
30 by a health plan through a purchasing pool.

1 (2) "Geographic service area" means the area for which a purchasing pool is certified to provide
2 service. The area may be specified as the entire state, by county, or by municipality.

3 (3) "Health plan" means a policy, subscriber contract, or certificate of insurance issued or issued
4 for delivery in Montana or a contract that provides coverage to a resident of this state for disability
5 insurance as benefits provided for in 33-1-207.

6
7 **NEW SECTION. Section 3. Commissioner power and duties -- application for certification.** (1) The
8 commissioner shall, by rule, develop procedures and forms for application by an organization for
9 certification as a purchasing pool.

10 (2) An organization seeking to be certified as a purchasing pool shall make an application to the
11 commissioner.

12 (3) Subject to the provisions of [section 4], the commissioner shall certify organizations as
13 voluntary purchasing pools upon proof of fulfillment of the qualifications provided in [section 5].

14 (4) Subject to the provisions of [section 4], the commissioner may limit the number of purchasing
15 pools licensed within a geographic service area. An applicant for certification shall demonstrate:

16 (a) reasons for probable success in representing a substantial share of the purchasers within a
17 proposed geographic service area; and

18 (b) that it is likely to represent purchasers already served by existing purchasing pools within the
19 same or a similar geographic service area.

20 (5) The commissioner shall, by rule, develop additional conditions that may be placed upon a
21 certificate of a purchasing pool to protect the interests of the consumers, to ensure fair and efficient
22 conduct of purchasing pool duties, and to protect purchasing pools from adverse selection or from bearing
23 any insurance risk. The rules must state the circumstances that warrant the imposition of the condition.

24 (6) The commissioner shall, by rule, develop additional conditions or waivers of restrictions that
25 may be attached to a certificate in order to facilitate the orderly market transition upon proof of necessity
26 by the applicant purchasing pool or by the commissioner. The conditions or waivers must include a specific
27 time period for which they are imposed.

28 (7) The commissioner shall conduct financial and performance audits or examinations of the
29 purchasing pool on a regular basis.

30 (8) The change in control, merger, or acquisition of a purchasing pool is subject to prior review and

1 approval of the commissioner on the same terms as a change in control, merger, or acquisition of a
2 domestic insurer.

3
4 **NEW SECTION. Section 4. ~~Initial certification~~ CERTIFICATION of single purchasing pool POOLS**
5 ~~—development of conditions for additional purchasing pools.~~ Initially, the commissioner shall certify a
6 single purchasing pool from among the applicants that apply within a period specified by rule. The
7 commissioner shall regularly review the situation to determine whether the objectives for purchasing pools
8 may be better served by establishing one or more additional pools. The commissioner shall develop, by
9 rule, criteria to provide guidance for determining when and under what conditions additional purchasing
10 pools must be established. The criteria must take into consideration factors such as the levels of enrollment
11 and market share; the effect of additional purchasing pools on economies of scale, cost containment, and
12 risk fragmentation; the need for competition; and the provision of service to various regions of the state.

13
14 **NEW SECTION. Section 5. Qualifications for certification as voluntary purchasing pool.** (1) A
15 purchasing pool may be certified upon compliance with the provisions of subsection (2).

16 (2) The purchasing pool:

17 (a) must contain at least 1,000 eligible individuals;

18 (b) shall establish requirements for membership, in addition to criteria developed by the
19 commissioner. However, the purchasing pool may not exclude any individual or employer group that
20 otherwise meets the requirements for membership on the basis of health status or claim experience, or
21 occupational group.

22 (c) shall hold an open enrollment period annually, for a period not to exceed 30 continuous calendar
23 days, during which new individuals and employer groups can join the voluntary purchasing pool;

24 (d) shall allow eligible individuals and employer groups, upon initial enrollment and during
25 subsequent enrollment periods, to choose among health plans offered through the purchasing pool.
26 Individuals or employer groups that are covered by a health plan offered through a purchasing pool that
27 requires an enrollment period in excess of 1 year are eligible to choose among available plans upon the
28 completion of the enrollment period.

29 (e) may not assume any risk or form self-insurance plans among its members;

30 (f) may not act as an agent or engage in any activities for which an insurance agent's license is

1 required. An insurer is exempt from any law of the state that prohibits providing or offering to provide to
2 a purchasing pool or to its members advantages based upon their loss and expense experience that are not
3 offered to other persons with respect to rates, policy forms, coverage, or other matters.

4 (g) must be incorporated as a private not-for-profit entity;

5 (h) must have a governing board composed of purchasers with a balanced representation of
6 consumers and employers;

7 (i) shall prepare a business plan for approval by the commissioner with a detailed, written plan of
8 operations explaining how the proposed purchasing pool intends to meet the public policy objectives of
9 reduced cost, increased access, and improved quality. If approved, the business plan is considered a
10 written commitment by the purchasing pool. Material changes in policy or operations are subject to the
11 prior approval of the commissioner on the same basis as the original business plan.

12 (j) may not negotiate for the purchase of disability insurance policies or contracts until the
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