



AN ACT GENERALLY REVISING INSURANCE LAWS; SUBSTITUTING THE TERM "BUSINESS ENTITY" FOR "PARTNERSHIP" AND "CORPORATION" IN VARIOUS CONTEXTS THROUGHOUT THE INSURANCE CODE; AUTHORIZING THE COMMISSIONER OF INSURANCE TO ADOPT RULES TO FACILITATE ELECTRONIC FILING OF CERTAIN DOCUMENTS; EXTENDING THE TIME THAT A LICENSEE MAY NOT CLAIM AN EXEMPTION FROM CERTAIN PROVISIONS OF STATE INSURANCE LAWS BASED ON FEDERAL PRIVACY STANDARDS; PROVIDING THAT A BUSINESS ENTITY THAT IS OTHER THAN A CORPORATION OR PARTNERSHIP MUST BE ORGANIZED UNDER THE LAWS OF THIS STATE; CLARIFYING THAT DISABILITY INSURANCE IS SUBJECT TO GUARANTEED RENEWABILITY PROVISIONS; REQUIRING THAT INSURED PAY ONLY THE REQUIRED COPAYMENT OR OTHER COST-SHARING REQUIREMENT FOR COVERED PRESCRIPTION DRUGS AT THE TIME OF PURCHASE; CLARIFYING CERTAIN INCURRED GROUP HEALTH INSURANCE CLAIMS MAY BE HELD PENDING PREMIUM PAYMENT; AMENDING SECTIONS 33-1-601, 33-2-116, 33-2-301, 33-2-305, 33-2-306, 33-4-502, 33-4-503, 33-4-504, 33-17-211, 33-17-212, 33-17-214, 33-17-231, 33-17-301, 33-17-1001, 33-17-1002, 33-17-1103, 33-17-1204, 33-19-105, 33-20-606, 33-20-1303, 33-20-1307, 33-21-113, 33-22-101, 33-22-142, 33-22-232, 33-22-302, 33-22-530, 33-22-602, 33-22-1809, 33-28-104, 33-30-102, 33-31-102, 33-31-111, AND 33-31-311, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Section 33-1-601, MCA, is amended to read:

"33-1-601. Commissioner -- attorney for service of process. (1) Each insurer applying for authority to transact insurance in this state shall appoint the commissioner as its attorney to receive service of legal process issued against it in Montana. Service of legal process under this section means a summons and a complaint. The appointment must be made on a form designated and furnished by the commissioner. The appointment is irrevocable, binds the insurer and any successor in interest or to the assets or liabilities of the insurer, and remains in effect as long as there is in force in Montana any contract made by the insurer or

obligations arising from a contract.

(2) Each insurer at the time of application for a certificate of authority shall file with the commissioner the name and address of the person to whom process against ~~it~~ the insurer served upon the commissioner is to be forwarded. The insurer may change the designation or address by a new filing, which must be filed on a form designated and furnished by the commissioner."

Section 2. Section 33-2-116, MCA, is amended to read:

"33-2-116. Issuance or refusal of certificate of authority -- state ownership of certificate. (1) If upon completion of ~~its~~ an insurer's application for a certificate of authority the commissioner finds that the insurer has met the requirements for a certificate of authority ~~and is entitled thereto~~ under this code, he the commissioner shall issue to the insurer a proper certificate of authority. If ~~he~~ the commissioner does not ~~so~~ find that the insurer is entitled to a certificate of authority, the commissioner shall issue his an order refusing such to issue a certificate. The commissioner shall act upon an application for a certificate of authority within 180 days after its completion.

(2) The certificate, if issued, ~~shall~~ must specify the kind or kinds of insurance the insurer is authorized to transact in Montana. At the insurer's request, the commissioner may issue a certificate of authority limited to particular types of insurance or insurance coverages within the scope of a kind of insurance as defined in 33-1-205 through 33-1-212.

(3) Although issued to the insurer, the certificate of authority is at all times the property of the state of Montana. Upon any expiration, ~~suspension~~, or termination ~~thereof~~ of the certificate of authority, the insurer shall promptly deliver the certificate of authority to the commissioner."

Section 3. Section 33-2-301, MCA, is amended to read:

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

(2) This part must be applied to:

- (a) protect persons seeking insurance in this state;
- (b) permit surplus lines insurance to be placed with reputable and financially sound unauthorized insurers

and to be exported from this state pursuant to this part;

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

(d) protect revenues of this state.

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

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

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

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

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

(e) (i) "Surplus lines insurance" means any insurance on risks resident, located, or to be performed in this state permitted to be placed through a surplus lines insurance producer with an unauthorized insurer eligible to accept the insurance.

(ii) The term does not include the kinds of insurance exempted under 33-2-317.

(f) "Surplus lines insurance producer" means an individual, ~~partnership, or corporation~~ business entity licensed under 33-2-305 to place surplus lines insurance on risks resident, located, or to be performed in this state with unauthorized insurers eligible to accept the insurance.

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

Section 4. Section 33-2-305, MCA, is amended to read:

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

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

- (a) remitted to the commissioner the fee prescribed by 33-2-708;
 - (b) submitted to the commissioner a completed license application in a form approved by the commissioner; and
 - (c) been licensed as a property and casualty insurance producer continuously for 5 years or more.
- (3) The licensee shall renew the license on a form prescribed by the commissioner. The commissioner may establish rules for biennial renewal of the license. A license lapses if not renewed.
- (4) A ~~corporation~~ business entity is eligible to be licensed as a surplus lines insurance producer if:
- (a) the ~~corporate~~ business entity's license lists the individuals within the ~~corporation~~ business entity who have satisfied the requirements of this part to become surplus lines insurance producers; and
 - (b) only those individuals listed on the ~~corporate~~ business entity's license transact surplus lines insurance.
- (5) This section may not be construed to require agents, producers, or brokers acting as intermediaries between a surplus lines insurance producer and an unauthorized insurer under this part to hold a valid Montana surplus lines insurance producer's license."

Section 5. Section 33-2-306, MCA, is amended to read:

"33-2-306. Surplus lines insurance producer's authority under license -- acceptance of business from other insurance producers. (1) Under a surplus lines insurance producer's license the licensee may place surplus lines insurance, in compliance with ~~The Surplus Lines Insurance Law~~ this part, with a foreign or alien insurer not authorized to transact insurance in this state and may act as a surplus lines insurance producer in this state for the insurer.

(2) The surplus lines insurance producer may accept surplus lines insurance from a licensed insurance producer of an authorized insurer or, if the commissioner agrees in advance, through an individual, ~~partnership,~~ or ~~corporation~~ business entity that has not been appointed as an insurance producer in this state and may compensate ~~him therefor~~ the licensed insurance producer of an authorized insurer, individual, or business entity for the accepted surplus lines insurance.

(3) A surplus lines insurance producer who places or renews surplus lines insurance in accordance with subsection (1) may collect an inspection fee for the actual costs of inspecting the risk to be covered."

Section 6. Section 33-4-502, MCA, is amended to read:

"33-4-502. Limit of risk -- retention of liability. (1) Except as provided in subsection (3), the maximum amount of insurance that an insurer ~~shall~~ may retain on a single risk, after deduction of applicable reinsurance, may not exceed the greater of 10% of the admitted assets of the insurer or \$50,000, ~~whichever is the larger amount.~~

(2) For the purposes of this section, a "single risk" as to insurance against fire and hazards other than windstorm, earthquake, or other catastrophic perils includes all properties insured by the same insurer that are reasonably susceptible to loss or damage from the same fire or the same occurrence of another hazard insured against.

(3) A farm mutual insurer:

(a) that insures any portion of a liability risk shall maintain a surplus of at least \$50,000;

(b) that retains any portion of a liability risk shall obtain reinsurance on that liability insurance with an insurer ~~authorized to do business in this state~~ that meets the criteria established in 33-4-503, and the farm mutual insurer's maximum aggregate liability for incurred losses on liability coverage retained for any calendar year or contract year may not exceed the smaller of \$200,000 or 20% of the farm mutual insurer's surplus as of December 31 of the preceding year; and

(c) may not retain liability risk or risk resulting from insuring growing crops against loss or damage from hail or other hazards greater than the proportional share of each limit of liability in the following schedule:

Surplus as of the Preceding December 31:	Proportional Share of Each Limit of Liability Retained:
\$1,000,000 or greater	15%
\$800,000 to \$999,999	12%
\$600,000 to \$799,999	9%
\$400,000 to \$599,999	6%
\$200,000 to \$399,999	3%
Under \$200,000	0"

Section 7. Section 33-4-503, MCA, is amended to read:

"33-4-503. Reinsurance. A farm mutual insurer may cede reinsurance to any other farm mutual insurer

or insurers and to other authorized property insurers and reinsurers meeting the requirements of 33-2-1216(3) and may accept reinsurance from other farm mutual insurers."

Section 8. Section 33-4-504, MCA, is amended to read:

"33-4-504. Cash premium or assessment plans. (1) An insurer may transact business either on ~~the~~ a cash premium plan ~~altogether~~ or on ~~the~~ an assessment plan ~~altogether~~, depending upon whichever ~~which~~ plan is provided for in its articles of incorporation or bylaws.

(2) If transacting business on the cash premium plan, the insurer shall collect from each member ~~before~~ or at the time of effectuation of the member's insurance ~~the~~ a premium in cash in ~~such an~~ such an amount ~~as that~~ the insurer ~~deems will be~~ considers adequate to cover losses and expenses incurred during the term of ~~such the~~ insurance.

(3) If transacting business on the assessment plan, the insurer ~~will~~ must principally depend for the payment of losses and expenses ~~principally~~ upon assessments from time to time levied upon members either before or after ~~such any~~ such any losses or expenses have been incurred. This provision ~~shall may~~ shall may not be construed; ~~however,~~ as preventing any ~~such~~ insurer from collecting from each member ~~such an~~ such an initial amount ~~as it may deem~~ that the insurer considers proper prior to or at the time of the effectuation of the member's insurance; ~~nor shall it be deemed,~~ and this provision may not be considered to prohibit the acquisition, accumulation, and maintenance of surplus or unallocated funds.

(4) An insurer transacting business on the cash premium plan may ~~nevertheless~~ provide in its bylaws and policies for special assessment of its members ~~in event~~ if the cash premium charged is found by ~~it~~ the insurer to be inadequate to pay in full losses and expenses currently incurred. The bylaws ~~shall must~~ shall must provide a specific limitation ~~as to on~~ on the amount ~~which that~~ that can be ~~so~~ assessed in any one policy year, ~~such and the amount to may~~ such and the amount to may ~~not be~~ not less than one or more than six times the premium charged on each member's policy at the annual rate for a term of 1 year."

Section 9. Section 33-17-211, MCA, is amended to read:

"33-17-211. General qualifications -- application for license. (1) An individual applying for a license shall apply in a form approved by the commissioner and declare under penalty of refusal, suspension, or revocation of the license that statements made in the application are true, correct, and complete to the best of

the individual's knowledge and belief. Before approving the application, the commissioner shall verify that the individual:

- (a) is 18 years of age or older;
- (b) has not committed an act that is a ground for refusal, suspension, or revocation as set forth in 33-17-1001;
- (c) has paid the license fees stated in 33-2-708;
- (d) has successfully passed the examinations for each kind of insurance for which the individual has applied within 12 months of application;
- (e) is a resident of this state or of another state that grants similar privileges to residents of this state. Licenses issued based upon Montana state residency terminate if the licensee relocates to another state.
- (f) is competent, trustworthy, and of good reputation;
- (g) has experience or training or otherwise is qualified in the kind or kinds of insurance for which the applicant applies to be licensed and is reasonably familiar with the provisions of this code that govern the applicant's operations as an insurance producer;
- (h) if applying for a license as to life or disability insurance, except as permitted by 33-20-1501(1)(c)(ii):
- (i) is not a funeral director, undertaker, or mortician operating in this or any other state;
- (ii) is not an officer, employee, or representative of a funeral director, undertaker, or mortician operating in this or any other state; or
- (iii) does not hold an interest in or benefit from a business of a funeral director, undertaker, or mortician operating in this or any other state; and
- (i) has completed a background examination pursuant to 33-17-220.

(2) A resident or nonresident business entity acting as an insurance producer is required to obtain an insurance producer's license. Application must be made in a form approved by the commissioner. To approve the application, the commissioner shall verify that:

- (a) the business entity has paid the appropriate fee; and
- (b) the business entity has designated an individual licensed insurance producer who is responsible for the business entity's compliance with the insurance laws of this state.

(3) A person acting as an insurance producer shall obtain a license. A person shall apply for a license in a form approved by the commissioner. Before approving the application, the commissioner shall verify that:

- (a) the person meets the requirements listed in subsection (1);
 - (b) the person has paid the licensing fees stated in 33-2-708 for each individual licensed in conjunction with the person's license. A licensed person shall promptly notify the commissioner of each change relating to an individual listed in the license.
 - (c) the person has designated a licensed officer to be responsible for the person's compliance with the insurance laws and rules of this state;
 - (d) each member, ~~and employee, of a partnership and each officer, director, or stockholder, or employee~~ of a ~~corporation~~ business entity who is acting as an insurance producer in this state has obtained a license;
 - (e) (i) ~~if the person is a partnership or corporation~~ with respect to a business entity, the transaction of insurance business is within the purposes stated in the partnership agreement, the articles of incorporation, or other organizational documents; and
 - (ii) ~~if the person is~~ with respect to a corporation, the secretary of state has issued a certificate of existence or authority under 35-1-1312 or filed articles of incorporation under 35-1-220.
- (4) (a) The commissioner may license as a resident insurance producer an association of licensed Montana insurance producers, whether or not incorporated, formed and existing substantially for purposes other than insurance.
- (b) The license must be used solely for the purpose of enabling the association to place, as a resident insurance producer, insurance of the properties, interests, and risks of the state of Montana and of other public agencies, bodies, and institutions and to receive the customary commission for the placement.
 - (c) The president and secretary of the association shall apply for the license in the name of the association, and the commissioner shall issue the license to the association in the association's name alone.
 - (d) The fee for the license is the same as that required by 33-2-708(1)(a).
 - (e) The commissioner may, after a hearing with notice to the association, revoke the license if the commissioner finds that continuation of the license is not in the public interest or that a ground listed in 33-17-1001 exists.
- (5) An insurance producer using an assumed business name shall register the name with the commissioner before using the name."

Section 10. Section 33-17-212, MCA, is amended to read:

"33-17-212. Examination required -- exceptions -- fees. (1) Except as provided in subsection (6), an individual applying for a license is required to pass a written examination. The examination must test the knowledge of the individual concerning each kind of insurance listed in subsection (5) for which application is made, the duties and responsibilities of an insurance producer, and the insurance laws and rules of this state. The examination must be developed and conducted under rules adopted by the commissioner.

(2) The commissioner may conduct the examination or make arrangements, including contracting with an outside testing service, for administering the examination. The commissioner may arrange for the testing service to recover the cost of the examination from the applicant.

(3) An individual who fails to appear for the examination as scheduled or fails to pass the examination may reapply for an examination and shall remit all forms before being rescheduled for another examination.

(4) If the applicant is a ~~partnership or corporation~~ business entity, each individual who is to be named in the license as having authority to act for the applicant in its insurance transactions under the license ~~shall~~ must meet the qualifications ~~as provided for~~ in this section.

(5) Examination of an applicant for a license must cover all of the kinds of insurance for which the applicant has applied to be licensed, as constituted by any one or more of the following classifications:

(a) life insurance;

(b) disability insurance;

(c) property insurance. ~~For, which for~~ the purposes of this provision, ~~property insurance~~ includes marine insurance;

- (d) casualty insurance;
- (e) surety insurance;
- (f) limited lines credit insurance;
- (g) title insurance.

(6) This section does not apply to and an examination is not required of:

(a) an individual lawfully licensed as an insurance producer as to the kind or kinds of insurance to be transacted as of or immediately prior to January 1, 1961, and who continues to be licensed;

(b) an applicant for a license covering the same kind or kinds of insurance as to which the applicant was licensed in this state, other than under a temporary license, within the 12 months immediately preceding the date of application unless the commissioner has suspended, revoked, or terminated the previous license;

- (c) an applicant for a license as a nonresident insurance producer;
- (d) transportation ticket agents of common carriers applying for a license to solicit and sell only:
 - (i) accident insurance ticket policies; or
 - (ii) insurance of personal effects while being carried as baggage on a common carrier, as incidental to their duties as transportation ticket agents;
- (e) an association applying for a license under 33-17-211; or
- (f) an individual who, within 90 days of cancellation of a license issued by the state of the individual's residence, files with the commissioner a current letter of clearance certifying that the individual has passed an examination and held an insurance license in good standing in the individual's state of licensure, except that the individual shall take an examination pertaining to this state's law and each kind of insurance for which the individual has applied for a license and that is not covered under the license held in the other state.

(7) (a) Subject to the provisions of subsection (7)(b), an individual who applies for a nonresident insurance producer license in this state and who was previously licensed for the same lines of authority in another state may not be required to complete any prelicensing education or examination.

(b) The exemption in subsection (7)(a) is available only if the individual is currently licensed in the other state or the individual's application is received within 90 days of the cancellation of the individual's previous license and if the other state issues a certification that, at the time of the cancellation, the individual was in good standing in that state or the state's database records, maintained by the national association of insurance commissioners or any of the association's affiliates or subsidiaries that the association oversees, indicate that the insurance producer is or was licensed in good standing for the lines of authority requested."

Section 11. Section 33-17-214, MCA, is amended to read:

"33-17-214. Issuance of license -- insurance producer lines of authority -- license data -- lapse of license -- change of address. (1) A person who has met the requirements of 33-17-211 and 33-17-212 must be issued a license unless that person has been denied a license pursuant to 33-17-1001.

(2) An insurance producer may receive a license qualifying the insurance producer in one or more of the following lines of authority:

- (a) life insurance coverage on human lives, including benefits of endowment and annuities, and the coverage may include:

- (i) funeral insurance as defined in 33-20-1501;
 - (ii) benefits in the event of death or dismemberment by accident; and
 - (iii) benefits for disability income;
- (b) accident and health or sickness insurance coverage providing for sickness, bodily injury, or accidental death, and the coverage may provide benefits for disability income;
- (c) property insurance coverage for the direct or consequential loss or damage to property of every kind;
- (d) casualty insurance coverage against legal liability, including liability for death, injury, or disability or damage to real or personal property;
- (e) variable life and variable annuity products insurance coverage provided under variable life insurance contracts and variable annuities;
- (f) personal lines of property and casualty insurance coverage sold to individuals and families for primarily noncommercial purposes;
- (g) limited line credit insurance; or
- (h) any other line of insurance permitted under Title 33.
- (3) The license must state the name and address of the licensee, personal identification number, date of issuance, general conditions relative to expiration or termination, kind of insurance covered, and other information that the commissioner considers necessary.
- (4) The license of a ~~partnership, corporation, or association~~ business entity must also state the name of each individual authorized to exercise the license powers.
- (5) Each license remains in effect, unless it is suspended, revoked, or terminated or the license lapses.
- (6) (a) A person shall inform the commissioner in writing within 30 days of:
- (i) a change of address;
 - (ii) the final disposition resulting in disciplinary action taken against or a conviction of the insurance producer in any state or federal jurisdiction or by another governmental agency in this state of:
 - (A) any administrative action related to transacting insurance;
 - (B) any action taken against any type of securities license; and
 - (C) any criminal action, excluding traffic violations.
- (b) (i) As used in this subsection (6), "final disposition" includes but is not limited to a settlement agreement, consent order, plea agreement, sentence and judgment, or order.

(ii) The term does not include an action that is dismissed or that results in an acquittal, for which no report is necessary."

Section 12. Section 33-17-231, MCA, is amended to read:

"33-17-231. Appointment of insurance producers -- continuation and termination. (1) Each insurer appointing an insurance producer in this state shall file with the commissioner the appointment, specifying the kinds of insurance to be transacted by the insurance producer for the insurer. The appointment may be electronically filed ~~pursuant to rules adopted by the commissioner.~~ The commissioner may adopt rules to implement electronic filing.

(2) Each appointment remains in effect until the insurance producer's license is revoked or otherwise terminated unless written notice of earlier termination of the appointment is filed with the commissioner by the insurer or the insurance producer. The written notice may be electronically filed ~~pursuant to rules adopted by the commissioner.~~ The commissioner may adopt rules to implement electronic filing. Termination of the insurer's authority in Montana also terminates the appointment.

(3) Subject to the insurance producer's contract rights, an insurer may terminate an insurance producer's appointment at any time. The insurer shall promptly give written notice of the termination to the commissioner and to the insurance producer. The commissioner may require reasonable proof that the insurer has given notice to the insurance producer.

(4) As part of the notice of termination given the commissioner, the insurer shall file with the commissioner a statement of the facts relative to the termination and the cause of termination. Any information or statement contained in the notice of termination is not admissible as evidence in any action or proceeding against the insurer or any representative of the insurer by or on behalf of any person affected by the termination."

Section 13. Section 33-17-301, MCA, is amended to read:

"33-17-301. Adjuster license -- qualifications -- catastrophe adjustments -- public adjuster. (1) An individual may not act as or purport to be an adjuster in this state unless licensed as an adjuster under this chapter. An individual shall apply to the commissioner for an adjuster license in a form approved by the commissioner. The commissioner shall issue the adjuster license to individuals qualified to be licensed as an adjuster.

- (2) To be licensed as an adjuster, the applicant:
 - (a) must be an individual 18 years of age or more;
 - (b) must be a resident of Montana or resident of another state that ~~will permit~~ permits residents of Montana regularly to act as adjusters in the other state;
 - (c) shall pass an adjuster licensing examination as prescribed by the commissioner and pay the fee pursuant to 33-2-708;
 - (d) must be trustworthy and of good character and reputation; and
 - (e) must have and shall maintain in this state an office accessible to the public and shall keep in the office for not less than 5 years the usual and customary records pertaining to transactions under the license. This provision does not prohibit maintenance of the office in the home of the licensee.
- (3) A ~~partnership or corporation~~ business entity, whether or not organized under the laws of this state, may be licensed as an adjuster if each individual who is to exercise the adjuster license powers is separately licensed or is named in the ~~partnership or corporation~~ business entity adjuster license and is qualified for an individual adjuster license.
- (4) An adjuster license or qualifications are not required for an adjuster who is sent into this state by and on behalf of an insurer or adjusting ~~partnership or corporation~~ business entity for the purpose of investigating or making adjustments of a particular loss under an insurance policy or for the adjustment of a series of losses resulting from a catastrophe common to all losses.
- (5) An adjuster license continues in force until lapsed, suspended, revoked, or terminated. The licensee shall renew the license by the biennial renewal date and pay the appropriate fee or the license will lapse. The biennial fee is established pursuant to 33-2-708.
- (6) The commissioner may adopt rules providing for the examination, licensure, bonding, and regulation of public adjusters."

Section 14. Section 33-17-1001, MCA, is amended to read:

"33-17-1001. Suspension, revocation, or refusal of license. (1) The commissioner may suspend, revoke, refuse to renew, or refuse to issue an insurance producer's license, adjuster license, or consultant license, may levy a civil penalty in accordance with 33-1-317, or may choose any combination of actions when an insurance producer, adjuster, consultant, or applicant for those licenses has:

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

(b) obtained or attempted to obtain a license through misrepresentation or fraud, including but not limited to providing incorrect, misleading, incomplete, or materially untrue information in the license application or in the continuing education affidavit;

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

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

(e) been convicted of a felony;

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

(g) misrepresented the terms of an actual or proposed insurance contract or application for insurance;

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

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

(j) forged another's name to an application for insurance or to any document related to an insurance transaction;

(k) cheated on an examination for a license; or

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

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

(3) The commissioner retains the authority to enforce the provisions of and impose any penalty or remedy authorized by the insurance code against any person who is under investigation for or charged with a violation of the insurance code even if the person's license or registration has been surrendered, suspended, revoked, refused, or denied or has lapsed."

Section 15. Section 33-17-1002, MCA, is amended to read:

"33-17-1002. Procedure following suspension or revocation. (1) Upon suspension, revocation, or refusal of a license, the commissioner shall notify the licensee or applicant by mail addressed to the licensee or applicant at the last-known address contained in the records of the commissioner. Notice is effectuated when mailed.

(2) The commissioner may reissue a license that has lapsed if the insurance producer has paid the lapsed license reinstatement fee pursuant to 33-2-708 and has filed certification of completion of continuing education requirements for the preceding biennium within 1 year of the lapse occurring.

(3) The commissioner may not again issue a license under this code to a person whose license has been revoked until after expiration of 1 year and until the person again qualifies for a license in accordance with this code. If the commissioner revokes a person's license, the commissioner may refuse to issue a license to the person for up to 5 years after the revocation. A person whose license has been revoked twice is not again eligible for any license under this code.

(4) If the license of a ~~partnership or corporation~~ business entity is suspended or revoked, a member, ~~of the partnership or officer,~~ or director of the ~~corporation~~ business entity may not be licensed or be designated in a license to exercise ~~its~~ the business entity's powers during the period of the suspension or revocation unless the commissioner determines upon substantial evidence that the member, officer, or director was not personally at fault and did not acquiesce in the matter on account of which the license was suspended or revoked."

Section 16. Section 33-17-1103, MCA, is amended to read:

"33-17-1103. Accepting and paying commissions, fees, or consideration. (1) An insurer or insurance producer may not pay, directly or indirectly, a commission, service fee, brokerage fee, or other valuable consideration to a person for services as an insurance producer unless the person performing the service holds a valid license with regard to the kind or kinds of insurance for which the service was rendered at the time the service was performed. A person not properly licensed in accordance with this chapter at the time the person performs the service as an insurance producer may not accept a commission, service fee, brokerage fee, or other valuable consideration for the service. This section does not prevent payment or receipt of renewal or other deferred commissions to or by a person entitled to receive the payment under this section.

(2) An insurance producer may not directly or indirectly share the insurance producer's commissions or other compensation received or to be received by the insurance producer on account of a transaction under the

insurance producer's license with any person not also licensed under this chapter as to the same kind or kinds of insurance involved in the transactions. This provision does not affect payment of the regular salaries due to employees of the licensee, the distribution in regular course of business of compensation and profits among members or stockholders if the licensee is a ~~partnership or corporation~~ business entity, or use of funds for family or personal purposes.

(3) Surplus lines producers may share commissions with a property and casualty insurance producer pursuant to 33-2-306."

Section 17. Section 33-17-1204, MCA, is amended to read:

"33-17-1204. Review and approval of continuing education courses by commissioner -- advisory council. (1) The commissioner shall, after review by and at the recommendations of the advisory council established under subsection (2), approve only those continuing education courses, lectures, seminars, and instructional programs that the commissioner determines would improve the product knowledge, management, ethics, or marketing capability of the licensee. Course content, instructors, material, instructional format, and the sponsoring organization must be approved and periodically reviewed by the commissioner. The fee for approval of a course, lecture, seminar, or instructional program is listed in 33-2-708(2). The commissioner shall also determine the number of credit hours to be awarded for completion of an approved continuing education activity.

(2) The commissioner shall appoint an advisory council, pursuant to 2-15-122, consisting of at least one representative of the independent insurance agents of Montana, one representative of the ~~Montana~~ national association of insurance and financial advisors-Montana, one representative of the professional insurance agents of Montana, one representative of the Montana state adjusters association, one title insurance producer, two public members who are not directly employed by the insurance industry, one insurance producer or consultant not affiliated with any of the three listed organizations, and a nonvoting presiding officer from the department who will be appointed by the commissioner as a representative of the department. The members of the council shall serve a term of 2 years, except that the initial term of the representative from each organization is 3 years. The commissioner shall consult with the council in formulating rules and standards for the approval of continuing education activities and prior to approving specific education activities. The provisions of 2-15-122(9) and (10) do not apply to this council.

(3) In conducting periodic review of course content, instructors, material, instructional format, or a

sponsoring organization, the commissioner may exercise any investigative power of the commissioner provided for in 33-1-311 or 33-1-315.

(4) If after review or investigation the commissioner determines an approved continuing education activity is not being operated in compliance with the standards established under this section, the commissioner may revoke approval, place the activity under probationary approval, or issue a cease and desist order under 33-1-318."

Section 18. Section 33-19-105, MCA, is amended to read:

"33-19-105. Exemption based on federal standards for privacy of individually identifiable health information -- notice to commissioner required -- rules. (1) The obligations imposed under this chapter do not apply to a licensee that is a covered entity under the provisions of federal regulations that are part of the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), 45 CFR, parts 160 and 164, standards for privacy of individually identifiable health information or security standards for the protection of electronic health information as to any use or disclosure of personal information that is covered under the HIPAA privacy and security regulations, except for the following provisions:

(a) A notice of insurance information practices described as a notice of privacy practices for protected health information under HIPAA privacy regulations must be delivered annually, as provided for in 33-19-202(1).

(b) To the extent that an insurer collects, discloses, or uses personal information that is not covered under the HIPAA notice of privacy practices, a separate Montana specific notice must be delivered pursuant to the provisions of 33-19-202.

(c) A disclosure authorization remains valid for a period that does not exceed 24 months, as provided for in 33-19-206(2).

(d) The reasons for an adverse underwriting decision must be specified, as provided for in 33-19-303.

(e) Disclosure of underwriting information is required, as provided for in 33-19-308.

(2) The commissioner may adopt rules regarding the exceptions from the exemption provisions described in subsection (1), including additional exceptions that embody substantive provisions of this chapter but would not be preempted by HIPAA privacy regulations.

(3) If a licensee considers itself exempt from a provision of this chapter for the reason provided in subsection (1), the licensee shall give written notice to the commissioner of that exemption and a brief statement

describing why the licensee is a HIPAA-covered entity.

(4) A licensee may claim an exemption only for those lines of business that are subject to HIPAA privacy regulations. All other lines of business are subject to this chapter.

(5) A business associate, as defined in the HIPAA privacy regulations, 45 CFR 160.103, that is a party to a valid business associate agreement required by HIPAA privacy regulations is exempt from the provisions of this chapter, but only as to the scope of that particular agreement. Any activity of the business associate that falls outside of the scope of that agreement is subject to the provisions of this chapter.

(6) The commissioner retains the authority to conduct complete market conduct examinations of the licensee as to the privacy policies and practices that are subject to state privacy laws.

(7) Beginning July 1, ~~2009~~ 2011:

(a) if a licensee is subject to and in compliance with a federal regulation that is part of the federal health insurance portability and accountability privacy and security regulations, 45 CFR, parts 160 and 164, and the federal regulation with which the licensee complies is inconsistent with a provision of this chapter and not less protective of consumer privacy, the licensee is exempt from compliance with the inconsistent provision of this chapter;

(b) if a licensee considers itself exempt from a provision of this chapter for the reason provided in subsection (7)(a), the licensee shall give written notice to the commissioner of that exemption unless the requirements of this subsection (7) are preempted by HIPAA privacy regulations. The notice must include a statement of the reason for the claimed exemption."

Section 19. Section 33-20-606, MCA, is amended to read:

"33-20-606. Variable contracts to meet insurance contract requirements. (1) Except for 33-15-321 through 33-15-329, 33-20-302, and 33-20-307 for variable annuity contracts and 33-20-104, 33-20-110, 33-20-111, 33-20-112, and 33-20-201 through 33-20-213 for variable life insurance policies and as otherwise provided in this part, all pertinent provisions of Title 33 and other laws relating to insurance apply to separate accounts and their related policies and contracts.

(2) Any individual variable life insurance contract or any individual variable annuity contract delivered or issued for delivery in this state must contain grace and reinstatement provisions appropriate to the contract. Any individual variable life insurance contract must contain nonforfeiture provisions appropriate to ~~such a~~ that

contract.

(3) An insurer shall file with the commissioner a copy of a final prospectus, dated and effective, before it issues or delivers an individual variable life insurance contract or an individual variable annuity contract in this state.

(4) The reserve liability for any variable contract must be established in accordance with actuarial procedures that recognize the variable nature of benefits provided and mortality guarantees."

Section 20. Section 33-20-1303, MCA, is amended to read:

"33-20-1303. License requirements. (1) A person may not act as or purport to be a viatical settlement provider unless licensed as a viatical settlement provider under this part.

(2) (a) Except as provided in subsections (2)(b) and (2)(c), an individual may not broker, solicit, or negotiate viatical settlement contracts between a viator and one or more viatical settlement providers or otherwise act on behalf of a viator without first having obtained a license as a viatical settlement broker from the commissioner. An applicant for a viatical settlement broker's license shall:

(i) attend required viatical settlement broker training and pass a viatical settlement broker examination designated by the commissioner by rule; and

(ii) pay a fee for an original viatical settlement broker's license pursuant to 33-2-708. The fees for license renewal and lapsed license reinstatement for a viatical settlement broker's license are as provided in 33-2-708.

(b) A resident or nonresident insurance producer must be considered to meet the licensing requirements of a viatical settlement broker and must be permitted to operate as a viatical settlement broker if the insurance producer is licensed as an insurance producer with a life insurance line of authority in this state or in the insurance producer's home state and has been licensed for at least 1 year. In addition:

(i) not later than 30 days from the first day of operating as a viatical settlement broker, the insurance producer shall notify the commissioner, on a form or in a manner prescribed by the commissioner, that the insurance producer is acting as a viatical settlement broker and shall pay a fee pursuant to 33-2-708(1)(b)(viii). The notification must include an acknowledgment by the insurance producer that the insurance producer will operate as a viatical settlement broker in accordance with this part.

(ii) regardless of the manner in which the insurance producer is compensated, the insurance producer must be considered to represent only the viator and owes a fiduciary duty to the viator to act according to the

viator's instructions and in the best interests of the viator.

(c) If requested by the commissioner, a life insurance producer acting as a viatical settlement broker under this subsection (2) who has previously complied with subsection (2)(b)(i) shall report to the commissioner when renewing a resident or nonresident life insurance producer's license regarding the life insurance producer's intent to continue to act as a viatical settlement broker. The statement regarding an intent to continue acting as a viatical settlement broker must be made on the life insurance producer's license renewal form. An individual who makes a statement pursuant to this subsection (2)(c) may not be charged an additional fee.

(d) The provisions of subsections (2)(a) and (2)(b) do not prohibit an individual licensed as an attorney, certified public accountant, or certified financial planner who is accredited by a nationally recognized accreditation agency, who is retained to represent the viator, and whose compensation is not paid directly or indirectly by the viatical settlement provider from negotiating viatical settlement contracts without having to obtain a license as a viatical settlement broker.

(3) Regardless of the manner in which a viatical settlement broker or insurance producer is compensated, the viatical settlement broker or insurance producer must be considered to represent only the viator and the viatical settlement broker or insurance producer owes a fiduciary duty to the viator to act according to the viator's instructions and in the best interests of the viator.

(4) (a) To obtain a license to transact business as a viatical settlement provider or as a viatical settlement broker, if required to obtain a viatical settlement broker's license under the provisions of subsection (2)(a), an applicant shall apply for the license in a form approved by the commissioner and shall pay the fee required for the application.

(b) The commissioner may request biographical, organizational, locational, financial, employment, and other information on the application form that the commissioner determines to be relevant to the evaluation of applications and to the granting of the license. The commissioner may require a statement of the business plan or plan of operation of the applicant. The commissioner shall require an applicant for a viatical settlement provider license to file with the application for the commissioner's approval a copy of the viatical settlement contract that the applicant intends to use in business under the license.

(c) If an applicant is a corporation, the corporation must be:

- (i) incorporated or organized under the laws of this state; or
- (ii) a foreign corporation authorized to transact business in this state.

(d) If the applicant is a partnership, the partnership must be organized under the laws of this state.

(e) If the applicant is a business entity other than a corporation or partnership, the business entity must be organized under the laws of this state.

(5) (a) An individual licensed as a viatical settlement broker must meet the continuing education requirements in 33-17-1203.

(b) The hours of continuing education required under subsection (5)(a) must be in the subjects of life insurance, viaticals, or ethics.

(c) For an individual licensed as a viatical settlement broker, the 24-month period for meeting the continuing education requirements must correlate with the broker's license renewal period.

(d) The viatical settlement broker's license of an individual who fails to comply with this continuing education requirement and who has not been granted an extension of time to comply in accordance with 33-17-1203(2) must be terminated and promptly surrendered to the commissioner."

Section 21. Section 33-20-1307, MCA, is amended to read:

"33-20-1307. Suspension -- revocation -- refusal to issue or renew license. (1) The commissioner may suspend, revoke, refuse to issue, or refuse to renew a license if the commissioner determines that the licensee or applicant for a license is untrustworthy or incompetent to act as a licensee or is guilty of one or more of the following:

(a) dishonesty, fraud, or gross negligence in the conduct of business as a licensee;

(b) a pattern of unreasonable payments to policyholders or certificate holders;

(c) falsification of an application for the license or renewal of the license or misrepresentation or engagement in any other dishonest act in relation to the application;

(d) conduct resulting in a conviction of a felony under the laws of any state or of the United States;

(e) conviction of any crime, an essential element of which is dishonesty or fraud, under the laws of any state or of the United States;

(f) refusal to renew or cancellation, revocation, or suspension of authority to transact insurance or business as a viatical settlement provider, viatical settlement broker, or similar entity in another state;

(g) failure to pay a civil penalty imposed by final order of the commissioner or to carry out terms of probation set by the commissioner;

(h) refusal by a licensee to be examined or to produce accounts, records, or files for examination, refusal by any officers or employees to give information with respect to the affairs of the licensee, or refusal to perform any other legal obligation as to the examination, when required by the commissioner;

(i) affiliation with or under the same general management or interlocking directorate or ownership as another viatical settlement provider, viatical settlement broker, or insurer, any of which unlawfully transacts business in this state;

(j) failure at any time to meet any qualification for which issuance of the license could have been refused had the failure then existed and been known to the commissioner; or

(k) violation of any rule or order of the commissioner or any provision of Montana law.

(2) The commissioner may suspend or refuse to renew a license immediately and without hearing if the commissioner determines that one or both of the following circumstances exist:

(a) the licensee is insolvent;

(b) the financial condition or business practices of the licensee otherwise pose an imminent threat to the public health, safety, or welfare of the residents of this state.

(3) The commissioner may refuse to issue a license in the name of any ~~firm, partnership, or corporation~~ business entity if the commissioner believes that any member, officer, employee, stockholder, or partner who may materially influence the conduct of the applicant does not meet the standards of this section.

(4) A viatical settlement provider or viatical settlement broker holding a license that has not been renewed or that has been revoked shall surrender the license to the commissioner at the commissioner's request.

(5) The commissioner may take any other administrative action authorized under Montana law in addition to or in lieu of the actions authorized under this part."

Section 22. Section 33-21-113, MCA, is amended to read:

"33-21-113. Penalties. In addition to any penalty provided by law, a person or business entity who violates an order of the commissioner after it has become final and while the order is in effect shall, upon proof ~~thereof~~ of the violation to the satisfaction of ~~the~~ a court, ~~forfeit and~~ pay to the state of Montana a sum not to exceed \$250 if the violation is found to be not willful. ~~which~~ The sum may be recovered in a civil action, ~~except that if~~ If the violation is found to be willful, the amount of the penalty is may be in an amount ~~a sum~~ not to exceed \$1,000. The commissioner, ~~in his discretion,~~ may revoke or suspend the license or certificate of authority of the

person, ~~partnership, or corporation~~ or business entity guilty of ~~such the~~ violation. The order for suspension or revocation is subject to judicial review as provided in 33-1-711."

Section 23. Section 33-22-101, MCA, is amended to read:

"33-22-101. Exceptions to scope. (1) Subject to subsection (2), parts 1 through 4 of this chapter, except 33-22-107, 33-22-110, 33-22-111, 33-22-114, 33-22-125, 33-22-129, 33-22-130 through 33-22-136, 33-22-140, 33-22-141, 33-22-142, 33-22-243, and 33-22-304, and part 19 of this chapter do not apply to or affect:

(a) any policy of liability or workers' compensation insurance with or without supplementary expense coverage;

(b) any group or blanket policy;

(c) life insurance, endowment, or annuity contracts or supplemental contracts that contain only those provisions relating to disability insurance that:

(i) provide additional benefits in case of death or dismemberment or loss of sight by accident or accidental means; or

(ii) operate to safeguard contracts against lapse or to give a special surrender value or special benefit or an annuity if the insured or annuitant becomes totally and permanently disabled as defined by the contract or supplemental contract;

(d) reinsurance.

(2) Sections 33-22-150 through 33-22-152, [section 24], and 33-22-301 apply to group or blanket policies."

Section 24. Cost-sharing requirements -- applicability. (1) Each group or individual health insurance policy, certificate of insurance, and membership contract that covers prescription drugs and that is delivered, issued for delivery, renewed, extended, or modified in this state must provide that after the applicable deductible is met, the insured shall pay only the required copayment or other cost-sharing requirement for a covered prescription drug at the time of purchase if the prescription drug dispenser, third-party administrator, or health insurance issuer can determine that amount at the time of purchase.

(2) This section applies to blanket policies issued pursuant to Title 33, chapter 22, part 6.

(3) This section does not apply to disability income, hospital indemnity, medicare supplement,

accident-only, vision, dental, or long-term care policies.

Section 25. Section 33-22-142, MCA, is amended to read:

"33-22-142. Certification of creditable coverage. (1) A group health plan and a health insurance issuer offering group health insurance coverage shall issue the certification described in subsection (3):

(a) within 10 days after an individual ceases to be covered under the group health plan or otherwise becomes covered under a COBRA continuation provision;

(b) not later than 10 days after the expiration of the notice period for cancellation for nonpayment of premium ~~is effective~~ pursuant to the provisions of 33-22-121 and 33-22-530 or after termination of coverage for any other reason;

(c) in the case of an individual becoming covered under a COBRA continuation provision, at the time that the individual ceases to be covered under a COBRA continuation provision; and

(d) at the request on behalf of an individual made not later than 24 months after the date of termination of the coverage described in subsection (1)(a) or (1)(c), whichever is later.

(2) The certification pursuant to subsection (1)(a) may be provided, to the extent practicable, at a time consistent with notices required under any applicable COBRA continuation provision.

(3) Certification is the written:

(a) certification of the period of creditable coverage of the individual under a group health plan and the coverage under the COBRA continuation provision;

(b) certification of the waiting period, if any, and affiliation period, as defined in 33-31-102, if applicable, imposed with respect to the individual for any coverage under a group health plan;

(c) certification of the date of issuance of the certificate specified on the form; and

(d) notification to the individual of:

(i) the individual's option to apply to the Montana comprehensive health association, provided for in 33-22-1503, for an association portability plan, as defined in 33-22-1501, within 63 days of issuance of a certificate of creditable coverage;

(ii) the individual's conversion rights;

(iii) the availability of COBRA continuation coverage;

(iv) the telephone number and address of the Montana comprehensive health association; and

(v) other notification as determined necessary and in the form prescribed by rule by the commissioner.

(4) To the extent that medical care under a group health plan consists of group health insurance coverage, a group health plan satisfies the certification requirement of this section if the health insurance issuer offering the coverage provides the certification in accordance with this section.

(5) In the case of an election described in 33-22-141 by a group health plan or health insurance issuer, if the group health plan or health insurance issuer enrolls an individual for coverage under the group health plan and the individual provides a certification of coverage of the individual, the entity that issued the certification shall upon request of the group health plan or health insurance issuer promptly disclose information on coverage of classes and categories of health benefits available under the certified coverage. The entity may charge the requesting group health plan or health insurance issuer the reasonable cost of disclosing the information.

(6) This section applies to health insurance coverage offered by a health insurance issuer in the individual market in the same manner as it applies to health insurance coverage offered by a health insurance issuer in connection with a group health plan in the group market."

Section 26. Section 33-22-232, MCA, is amended to read:

"33-22-232. Renewal at option of insurer. (1) Except as provided in subsection (2), Disability disability insurance policies, other than accident insurance only policies, in which the insurer reserves the right to refuse renewal ~~shall~~ must provide ~~in substance the statement~~ in a policy provision, ~~thereof or in an endorsement, thereon or an attached rider attached thereto.~~ The statement must provide that, subject to the insurer's right to terminate the policy upon nonpayment of premium when due, ~~such~~ the right to refuse renewal may not be exercised so as to take effect before the renewal date occurring on or after and nearest each policy anniversary (or in the case of lapse and reinstatement, at the renewal date occurring on or after and nearest each anniversary of the last reinstatement), and that any refusal of renewal ~~shall~~ must be without prejudice to any claim originating while the policy is in force. The ~~parenthetic~~ reference to lapse and reinstatement may be omitted at the insurer's option.

(2) Policies conforming to this section are subject to the guaranteed renewability provisions of 33-22-247 or 33-22-524."

Section 27. Section 33-22-302, MCA, is amended to read:

"33-22-302. Age limits -- effect on coverage. (1) (a) Except as provided in subsection (1)(b), if any such disability policy contains a provision establishing, as an age limit or otherwise, a date after which the coverage provided by the policy will not be effective and if such that date falls within a period for which premium is accepted by the insurer or if the insurer accepts a premium after such that date, the coverage provided by the policy will continue in force subject to any right of cancellation until the end of the period for which premium has been accepted.

(b) Policies conforming to subsection (1)(a) are subject to the guaranteed renewability provisions of 33-22-247 or 33-22-524.

(2) In the event the age of the insured has been misstated and if, according to the correct age of the insured, the coverage provided by the policy would not have become effective or would have ceased prior to the acceptance of such the premium or premiums, then the liability of the insurer shall be is limited to the refund, upon request, of all premium or premiums paid for the period not covered by the policy."

Section 28. Section 33-22-530, MCA, is amended to read:

"33-22-530. Notice required for cancellation for nonpayment of group health insurance. (1) A health insurance issuer shall provide at least 15 days prior notification of cancellation for nonpayment of premium for group health insurance coverage.

(2) The notice must be sent to the policyholder at the policyholder's last-known address and must specify the date of cancellation of coverage. The insurer shall attach a properly executed proof of mailing to this notice and maintain a copy of the proof of mailing in its records.

(3) The health insurance issuer shall hold for processing of payment any claims received for covered benefits incurred during the 15-day notification period for nonpayment of premium for group health insurance coverage. Upon receipt of the premium, claims held for the 15-day notification period must be processed for payment.

(4) The policy continues in full force and effect, subject to the requirements of subsection (3), until the proper 15-day notice has been given, unless the coverage has already been replaced.

(5) The 15-day period begins to run from the date of the proof of mailing.

(6) The issuer may collect premiums for any time period that the coverage remains in effect.

(7) When coverage is actually canceled, notice must also be mailed to all certificate holders at:

- (a) their last-known home addresses if available; or
- (b) the business address of the group policyholder.

(8) The notice of cancellation to certificate holders must be separate from the certificate of creditable coverage required in 33-22-142, although it may be mailed simultaneously with the certificate."

Section 29. Section 33-22-602, MCA, is amended to read:

"33-22-602. Required provisions of blanket policies. Any An insurer authorized to write disability insurance in this state ~~shall have~~ has the power to issue blanket disability insurance. ~~No such A~~ blanket policy may not be issued or delivered in this state unless a copy of the policy form ~~thereof shall have been~~ is filed in accordance with 33-1-501. ~~Every such A~~ blanket policy ~~shall~~ must contain provisions ~~which that~~ in the opinion of the commissioner are at least as favorable to the policyholder and the individual insured as the following, ~~a provision that~~ provisions:

(1) the policy and the application ~~shall~~ constitute the entire contract between the parties, ~~and that~~ all statements made by the policyholder ~~shall are~~, in absence of fraud, ~~be deemed~~ considered representations and not warranties, ~~and that no such statements shall~~ may not be used in defense to a claim under the policy; unless it is contained in a written application;

(2) written notice of sickness or of injury must be given to the insurer within 20 days after the date when ~~such the~~ sickness or injury occurred. Failure to give notice within ~~such time shall~~ 20 days may not invalidate or reduce ~~any a~~ claim if it ~~shall be shown not to have been~~ the insured shows that it was not reasonably possible to give ~~such the required~~ notice and that notice was given as soon as was reasonably possible.

(3) the insurer will furnish to the policyholder ~~such forms as are usually furnished by it for filing proof of loss. If such forms are not furnished before the expiration of~~ within 15 days after the giving of ~~such notice~~ insured provided notice of sickness or injury, the claimant ~~shall be deemed~~ is considered to have complied with the requirements of the policy as to proof of loss upon submitting, within the time ~~fixed~~ established in the policy for filing proof of loss, written proof covering the occurrence, character, and extent of the loss for which claim is made.

(4) in the case of a claim for loss of time for disability, written proof of ~~such the~~ loss must be furnished to the insurer within 30 days after the commencement of the period for which the insurer is liable and ~~that~~ subsequent written ~~proofs~~ proof of the continuance of ~~such the~~ disability must be furnished to the insurer at ~~such~~

intervals ~~as established by the insurer, may reasonably require and that in~~ In the case of a claim for any other loss, written proof of ~~such the~~ the loss must be furnished to the insurer within 90 days after the date of ~~such the~~ the loss. Failure to furnish ~~such~~ such proof within ~~such time shall~~ 90 days may not invalidate or reduce ~~any a~~ a claim if ~~it shall be shown not to have been~~ the insured shows it was not reasonably possible to furnish ~~such the required~~ such the required proof and that ~~such~~ such proof was furnished as soon as was reasonably possible.

(5) ~~except as provided in [section 24], all benefits payable under the policy other than benefits for loss of time will be~~ are payable immediately upon receipt of ~~due~~ written proof of ~~such the~~ the loss, ~~and that, subject~~ Subject to ~~due~~ due proof of loss, all accrued benefits payable under the policy for loss of time ~~will~~ must be paid ~~not~~ not later than at the expiration of each period of at least every 30 days during the continuance of the period for which the insurer is liable, ~~and that any~~ Any balance remaining unpaid at the termination of ~~such period will~~ the period of liability must be paid immediately upon receipt of ~~such the~~ such the proof; of loss.

(6) the insurer at its own expense ~~shall have~~ has the right and opportunity to examine the person of the insured when and ~~so as~~ as often as it ~~may~~ may reasonably ~~require~~ required during the pendency of a claim under the policy and also the right and opportunity to make an autopsy in case of death ~~where~~ when it is not prohibited by law;

(7) ~~no~~ an action at law or in equity ~~shall~~ may not be brought to recover a loss under the policy ~~prior to the expiration of~~ sooner than 60 days after written proof of loss has been furnished in accordance with the requirements of the policy and ~~that no such action shall be brought after the expiration of~~ no later than 3 years after the time written proof of loss is required to be furnished."

Section 30. Section 33-22-1809, MCA, is amended to read:

"33-22-1809. Restrictions relating to premium rates. (1) Premium rates for health benefit plans under this part are subject to the following provisions:

(a) The index rate for a rating period for any class of business may not exceed the index rate for any other class of business by more than 20%.

(b) For each class of business, the premium rates charged during a rating period to small employers with similar case characteristics for the same or similar coverage or the rates that could be charged to the employer under the rating system for that class of business may not vary from the index rate by more than 25% of the index rate.

(c) The percentage increase in the premium rate charged to a small employer for a new rating period may not exceed the sum of the following:

(i) the percentage change in the new business premium rate measured from the first day of the prior rating period to the first day of the new rating period; in the case of a health benefit plan into which the small employer carrier is no longer enrolling new small employers, the small employer carrier shall use the percentage change in the base premium rate, provided that the change does not exceed, on a percentage basis, the change in the new business premium rate for the most similar health benefit plan into which the small employer carrier is actively enrolling new small employers;

(ii) any adjustment, not to exceed 15% annually and adjusted pro rata for rating periods of less than 1 year, because of the claims experience, health status, or duration of coverage of the employees or dependents of the small employer, as determined from the small employer carrier's rate manual for the class of business; and

(iii) any adjustment because of a change in coverage or a change in the case characteristics of the small employer, as determined from the small employer carrier's rate manual for the class of business.

(d) Adjustments in rates for claims experience, health status, and duration of coverage may not be charged to individual employees or dependents. Any adjustment must be applied uniformly to the rates charged for all employees and dependents of the small employer.

(e) If a small employer carrier uses industry as a case characteristic in establishing premium rates, the rate factor associated with any industry classification may not vary from the average of the rate factors associated with all industry classifications by more than 15% of that coverage.

(f) A small employer carrier shall:

(i) apply rating factors, including case characteristics, consistently with respect to all small employers in a class of business. Rating factors must produce premiums for identical groups that differ only by the amounts attributable to plan design and that do not reflect differences because of the nature of the groups. Differences among base premium rates may not be based in any way on the actual or expected health status or claims experience of the small employer groups that choose or are expected to choose a particular health benefit plan.

(ii) treat all health benefit plans issued or renewed in the same calendar month as having the same rating period.

(g) For the purposes of this subsection (1), a health benefit plan that includes a restricted network provision may not be considered similar coverage to a health benefit plan that does not include a restricted

network provision.

(2) A small employer carrier may not transfer a small employer involuntarily into or out of a class of business. A small employer carrier may not offer to transfer a small employer into or out of a class of business unless the offer is made to transfer all small employers in the class of business without regard to case characteristics, claims experience, health status, or duration of coverage since the insurance was issued.

(3) The commissioner may suspend for a specified period the application of subsection (1)(a) for the premium rates applicable to one or more small employers included within a class of business of a small employer carrier for one or more rating periods upon a filing by the small employer carrier and a finding by the commissioner either that the suspension is reasonable in light of the financial condition of the small employer carrier or that the suspension would enhance the fairness and efficiency of the small employer health insurance market.

(4) In connection with the offering for sale of any health benefit plan to a small employer, a small employer carrier shall make a reasonable disclosure, as part of its solicitation and sales materials, of each of the following:

(a) the extent to which premium rates for a specified small employer are established or adjusted based upon the actual or expected variation in claims costs or upon the actual or expected variation in health status of the employees of small employers and the employees' dependents;

(b) the provisions of the health benefit plan concerning the small employer carrier's right to change premium rates and the factors, other than claims experience, that affect changes in premium rates;

(c) the provisions relating to renewability of policies and contracts; and

(d) the provisions relating to any preexisting condition.

(5) (a) Each small employer carrier shall maintain at its principal place of business a complete and detailed description of its rating practices and renewal underwriting practices, including information and documentation that demonstrate that its rating methods and practices are based upon commonly accepted actuarial assumptions and are in accordance with sound actuarial principles.

(b) Each small employer carrier shall file with the commissioner annually, on or before March 15, an actuarial certification certifying that the carrier is in compliance with this part and that the rating methods of the small employer carrier are actuarially sound. The actuarial certification must be in a form and manner and must contain information as specified by the commissioner. A copy of the actuarial certification must be retained by

the small employer carrier at its principal place of business.

(c) A small employer carrier shall make the information and documentation described in subsection (5)(a) available to the commissioner upon request. Except in cases of violations of the provisions of this part and except as agreed to by the small employer carrier or as ordered by a court of competent jurisdiction, the information must be considered proprietary and trade secret information and is not subject to disclosure by the commissioner to persons outside of the department.

(6) The commissioner may not require prior approval of the rating methods used by small employer carriers or the premium rates of the health benefit plans offered to small employers."

Section 31. Section 33-28-104, MCA, is amended to read:

"33-28-104. Minimum capital surplus -- letter of credit. (1) A captive insurance company may not be issued a license unless it possesses and maintains unimpaired paid-in capital and surplus of:

- (a) in the case of a pure captive insurance company, not less than \$250,000;
- (b) in the case of an industrial insured captive insurance company, not less than \$500,000;
- (c) in the case of an association captive insurance company, not less than \$750,000; or
- (d) in the case of a protected cell captive insurance company, not less than \$500,000. However, if the protected cell captive insurance company does not assume any risks, the risks insured by the protected cells are homogenous, and if there are not more than 10 cells, the commissioner may reduce the amount required in this subsection (1)(d) to an amount not less than \$250,000.

(e) ~~(f)~~ in the case of a branch captive insurance company, not less than the applicable amount of capital and surplus required in subsections (1)(a) through (1)(d), as determined based upon the organizational form of the foreign captive insurance company; ~~and~~

~~_____ (ii) the~~ The minimum capital and surplus must be jointly held by the commissioner and the branch captive insurance company in a bank of the federal reserve system approved by the commissioner; ~~or~~

(f) in the case of a captive reinsurance insurance company, not less than 50% of the capital that would be required for that type of captive ~~reinsurance~~ insurance company.

(2) The commissioner may require additional capital and surplus based upon the type, volume, and nature of insurance business transacted.

(3) Capital and surplus may be in the form of cash, cash equivalent, or an irrevocable letter of credit

issued by a bank chartered by the state of Montana or a member bank of the federal reserve system and approved by the commissioner."

Section 32. Section 33-30-102, MCA, is amended to read:

"33-30-102. Application of this chapter -- construction of other related laws. (1) All health service corporations are subject to the provisions of this chapter. In addition to the provisions contained in this chapter, other chapters and provisions of this title apply to health service corporations as follows: 33-2-1212; 33-3-307; 33-3-308; 33-3-401; 33-3-431; 33-3-701 through 33-3-704; 33-17-101; Title 33, chapter 2, part 19; Title 33, chapter 17, parts 2 and 10 through 12; and Title 33, chapters 1, 15, 18, 19, and 22, except 33-22-111.

(2) A law of this state other than the provisions of this chapter applicable to health service corporations must be construed in accordance with the fundamental nature of a health service corporation, and in the event of a conflict, the provisions of this chapter prevail."

Section 33. Section 33-31-102, MCA, is amended to read:

"33-31-102. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Affiliation period" means a period that, under the terms of the health insurance coverage offered by a health maintenance organization, must expire before the health insurance coverage becomes effective.

(2) "Basic health care services" means:

(a) consultative, diagnostic, therapeutic, and referral services by a provider;

(b) inpatient hospital and provider care;

(c) outpatient medical services;

(d) medical treatment and referral services;

(e) accident and sickness services by a provider to each newborn infant of an enrollee pursuant to 33-31-301(3)(e);

(f) care and treatment of mental illness, alcoholism, and drug addiction;

(g) diagnostic laboratory and diagnostic and therapeutic radiologic services;

(h) preventive health services, including:

(i) immunizations;

- (ii) well-child care from birth;
- (iii) periodic health evaluations for adults;
- (iv) voluntary family planning services;
- (v) infertility services; and
- (vi) children's eye and ear examinations conducted to determine the need for vision and hearing correction;
- (i) minimum mammography examination, as defined in 33-22-132;
- (j) outpatient self-management training and education for the treatment of diabetes along with certain diabetic equipment and supplies as provided in 33-22-129; and
- (k) treatment and medical foods for inborn errors of metabolism. "Medical foods" and "treatment" have the meanings provided for in 33-22-131.
- (3) "Commissioner" means the commissioner of insurance of the state of Montana.
- (4) "Dependent" has the meaning provided in 33-22-140.
- (5) "Enrollee" means a person:
 - (a) who enrolls in or contracts with a health maintenance organization;
 - (b) on whose behalf a contract is made with a health maintenance organization to receive health care services; or
 - (c) on whose behalf the health maintenance organization contracts to receive health care services.
- (6) "Evidence of coverage" means a certificate, agreement, policy, or contract issued to an enrollee setting forth the coverage to which the enrollee is entitled.
- (7) "Health care services" means:
 - (a) the services included in furnishing medical or dental care to a person;
 - (b) the services included in hospitalizing a person;
 - (c) the services incident to furnishing medical or dental care or hospitalization; or
 - (d) the services included in furnishing to a person other services for the purpose of preventing, alleviating, curing, or healing illness, injury, or physical disability.
- (8) "Health care services agreement" means an agreement for health care services between a health maintenance organization and an enrollee.
- (9) "Health maintenance organization" means a person who provides or arranges for basic health care

services to enrollees on a prepaid basis, either directly through provider employees or through contractual or other arrangements with a provider or a group of providers. This subsection does not limit methods of provider payments made by health maintenance organizations.

(10) "Insurance producer" means an individual, ~~partnership, or corporation~~ or business entity appointed or authorized by a health maintenance organization to solicit applications for health care services agreements on its behalf.

(11) "Person" means:

- (a) an individual;
- (b) a group of individuals;
- (c) an insurer, as defined in 33-1-201;
- (d) a health service corporation, as defined in 33-30-101;
- (e) a corporation, partnership, facility, association, or trust; or
- (f) an institution of a governmental unit of any state licensed by that state to provide health care, including but not limited to a physician, hospital, hospital-related facility, or long-term care facility.

(12) "Plan" means a health maintenance organization operated by an insurer or health service corporation as an integral part of the corporation and not as a subsidiary.

(13) "Point-of-service option" means a delivery system that permits an enrollee of a health maintenance organization to receive health care services from a provider who is, under the terms of the enrollee's contract for health care services with the health maintenance organization, not on the provider panel of the health maintenance organization.

(14) "Provider" means a physician, hospital, hospital-related facility, long-term care facility, dentist, osteopath, chiropractor, optometrist, podiatrist, psychologist, licensed social worker, registered pharmacist, or advanced practice registered nurse, as specifically listed in 37-8-202, who treats any illness or injury within the scope and limitations of the provider's practice or any other person who is licensed or otherwise authorized in this state to furnish health care services.

(15) "Provider panel" means those providers with whom a health maintenance organization contracts to provide health care services to the health maintenance organization's enrollees.

(16) "Purchaser" means the individual, employer, or other entity, but not the individual certificate holder in the case of group insurance, that enters into a health care services agreement.

(17) "Uncovered expenditures" mean the costs of health care services that are covered by a health maintenance organization and for which an enrollee is liable if the health maintenance organization becomes insolvent."

Section 34. Section 33-31-111, MCA, is amended to read:

"33-31-111. (Temporary) Statutory construction and relationship to other laws. (1) Except as otherwise provided in this chapter, the insurance or health service corporation laws do not apply to a health maintenance organization authorized to transact business under this chapter. This provision does not apply to an insurer or health service corporation licensed and regulated pursuant to the insurance or health service corporation laws of this state except with respect to its health maintenance organization activities authorized and regulated pursuant to this chapter.

(2) Solicitation of enrollees by a health maintenance organization granted a certificate of authority or its representatives is not a violation of any law relating to solicitation or advertising by health professionals.

(3) A health maintenance organization authorized under this chapter is not practicing medicine and is exempt from Title 37, chapter 3, relating to the practice of medicine.

(4) This chapter does not exempt a health maintenance organization from the applicable certificate of need requirements under Title 50, chapter 5, parts 1 and 3.

(5) This section does not exempt a health maintenance organization from the prohibition of pecuniary interest under 33-3-308 or the material transaction disclosure requirements under 33-3-701 through 33-3-704. A health maintenance organization must be considered an insurer for the purposes of 33-3-308 and 33-3-701 through 33-3-704.

(6) This section does not exempt a health maintenance organization from:

- (a) prohibitions against interference with certain communications as provided under chapter 1, part 8;
- (b) the provisions of Title 33, chapter 22, part 19;
- (c) the requirements of 33-22-134 and 33-22-135;
- (d) network adequacy and quality assurance requirements provided under chapter 36, except as provided in 33-22-262; or
- (e) the requirements of Title 33, chapter 18, part 9.

(7) Except as provided in 33-22-262, the provisions of Title 33, chapter 1, parts 12 and 13, Title 33,

chapter 2, part 19, 33-2-1114, 33-2-1211, 33-2-1212, 33-3-401, 33-3-422, 33-3-431, 33-15-308, Title 33, chapter 17, Title 33, chapter 19, 33-22-107, 33-22-129, 33-22-131, 33-22-136, 33-22-141, 33-22-142, 33-22-152, [section 24], 33-22-244, 33-22-246, 33-22-247, 33-22-514, 33-22-521, 33-22-523, 33-22-524, 33-22-526, and 33-22-706 apply to health maintenance organizations. (Terminates June 30, 2009--sec. 14, Ch. 325, L. 2003.)

33-31-111. (Effective July 1, 2009) Statutory construction and relationship to other laws. (1) Except as otherwise provided in this chapter, the insurance or health service corporation laws do not apply to a health maintenance organization authorized to transact business under this chapter. This provision does not apply to an insurer or health service corporation licensed and regulated pursuant to the insurance or health service corporation laws of this state except with respect to its health maintenance organization activities authorized and regulated pursuant to this chapter.

(2) Solicitation of enrollees by a health maintenance organization granted a certificate of authority or its representatives is not a violation of any law relating to solicitation or advertising by health professionals.

(3) A health maintenance organization authorized under this chapter is not practicing medicine and is exempt from Title 37, chapter 3, relating to the practice of medicine.

(4) This chapter does not exempt a health maintenance organization from the applicable certificate of need requirements under Title 50, chapter 5, parts 1 and 3.

(5) This section does not exempt a health maintenance organization from the prohibition of pecuniary interest under 33-3-308 or the material transaction disclosure requirements under 33-3-701 through 33-3-704. A health maintenance organization must be considered an insurer for the purposes of 33-3-308 and 33-3-701 through 33-3-704.

(6) This section does not exempt a health maintenance organization from:

- (a) prohibitions against interference with certain communications as provided under chapter 1, part 8;
- (b) the provisions of Title 33, chapter 22, part 19;
- (c) the requirements of 33-22-134 and 33-22-135;
- (d) network adequacy and quality assurance requirements provided under chapter 36; or
- (e) the requirements of Title 33, chapter 18, part 9.

(7) Title 33, chapter 1, parts 12 and 13, Title 33, chapter 2, part 19, 33-2-1114, 33-2-1211, 33-2-1212, 33-3-401, 33-3-422, 33-3-431, 33-15-308, Title 33, chapter 17, Title 33, chapter 19, 33-22-107, 33-22-129, 33-22-131, 33-22-136, 33-22-141, 33-22-142, 33-22-152, [section 24], 33-22-244, 33-22-246, 33-22-247,

33-22-514, 33-22-521, 33-22-523, 33-22-524, 33-22-526, and 33-22-706 apply to health maintenance organizations."

Section 35. Section 33-31-311, MCA, is amended to read:

"33-31-311. Insurance producer license required. An individual, ~~partnership, or corporation~~ or business entity may not act as or represent to the public that the individual, ~~partnership, or corporation~~ or business entity is an insurance producer for a health maintenance organization unless the individual, ~~partnership, or corporation~~ or business entity is:

- (1) licensed as a disability insurance producer by the commissioner pursuant to Title 33, chapter 17, parts 1, 2, 4, and 10 through 12, or licensed as an insurance producer as provided in 33-30-311; and
- (2) appointed or authorized by the health maintenance organization or other health insurance issuer to sell, solicit, or negotiate health care service agreements on its behalf."

Section 36. Codification instruction. [Section 24] is intended to be codified as an integral part of Title 33, chapter 22, part 1, and the provisions of Title 33, chapter 22, part 1, apply to [section 24].

Section 37. Effective date. [This act] is effective July 1, 2009.

Section 38. Applicability. [Section 24] applies to policies, certificates, and membership contracts that are delivered, issued, renewed, extended, or modified on or after January 1, 2010.

- END -

I hereby certify that the within bill,
SB 0133, originated in the Senate.

Secretary of the Senate

President of the Senate

Signed this _____ day
of _____, 2009.

Speaker of the House

Signed this _____ day
of _____, 2009.

SENATE BILL NO. 133
INTRODUCED BY C. KAUFMANN
BY REQUEST OF THE STATE AUDITOR

AN ACT GENERALLY REVISING INSURANCE LAWS; SUBSTITUTING THE TERM "BUSINESS ENTITY" FOR "PARTNERSHIP" AND "CORPORATION" IN VARIOUS CONTEXTS THROUGHOUT THE INSURANCE CODE; AUTHORIZING THE COMMISSIONER OF INSURANCE TO ADOPT RULES TO FACILITATE ELECTRONIC FILING OF CERTAIN DOCUMENTS; EXTENDING THE TIME THAT A LICENSEE MAY NOT CLAIM AN EXEMPTION FROM CERTAIN PROVISIONS OF STATE INSURANCE LAWS BASED ON FEDERAL PRIVACY STANDARDS; PROVIDING THAT A BUSINESS ENTITY THAT IS OTHER THAN A CORPORATION OR PARTNERSHIP MUST BE ORGANIZED UNDER THE LAWS OF THIS STATE; CLARIFYING THAT DISABILITY INSURANCE IS SUBJECT TO GUARANTEED RENEWABILITY PROVISIONS; REQUIRING THAT INSURED PAY ONLY THE REQUIRED COPAYMENT OR OTHER COST-SHARING REQUIREMENT FOR COVERED PRESCRIPTION DRUGS AT THE TIME OF PURCHASE; CLARIFYING CERTAIN INCURRED GROUP HEALTH INSURANCE CLAIMS MAY BE HELD PENDING PREMIUM PAYMENT; AMENDING SECTIONS 33-1-601, 33-2-116, 33-2-301, 33-2-305, 33-2-306, 33-4-502, 33-4-503, 33-4-504, 33-17-211, 33-17-212, 33-17-214, 33-17-231, 33-17-301, 33-17-1001, 33-17-1002, 33-17-1103, 33-17-1204, 33-19-105, 33-20-606, 33-20-1303, 33-20-1307, 33-21-113, 33-22-101, 33-22-142, 33-22-232, 33-22-302, 33-22-530, 33-22-602, 33-22-1809, 33-28-104, 33-30-102, 33-31-102, 33-31-111, AND 33-31-311, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.