SENATE BILL NO. 375

INTRODUCED BY E. WALKER

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING WORKERS' COMPENSATION LAWS; REQUIRING ANY WINDFALL ACCRUED FROM CHANGES TO WORKERS' COMPENSATION LAWS TO BE RETURNED TO POLICYHOLDERS OR TO ORIGINATING FUNDS FOR WORKERS' COMPENSATION PREMIUMS PAID FOR STATE EMPLOYEES; REQUIRING THE STATE COMPENSATION INSURANCE FUND TO BE REGULATED BY THE STATE AUDITOR; REQUIRING THE STATE COMPENSATION INSURANCE FUND TO PAY A FEE TO THE STATE AUDITOR AS AN INSURER; REQUIRING CONFORMITY BY THE STATE COMPENSATION INSURANCE FUND WITH RATING ORGANIZATIONS AND CLASSIFICATION CATEGORIES USED BY PRIVATE INSURERS; EXPANDING THE CLASSIFICATION CATEGORIES TO INCLUDE THOSE USED BY STATE FUND; REQUIRING MARKET AND FINANCIAL EXAMINATIONS OF STATE FUND; AMENDING SECTIONS 33-1-102, 33-2-708, 33-16-303, 33-16-1001, 33-16-1002, 33-16-1008, 33-16-1012, 33-16-1021, 33-16-1026, 33-16-1035, 39-71-403, 39-71-435, 39-71-2311, 39-71-2314, 39-71-2315, 39-71-2316, 39-71-2330, AND 39-71-2351, MCA; REPEALING SECTIONS 33-16-1024 AND 39-71-2362, MCA; PROVIDING EFFECTIVE DATES, APPLICABILITY DATES, AND A TERMINATION DATE."

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

Section 1. Section 33-1-102, MCA, is amended to read:

"33-1-102. Compliance required -- exceptions -- health service corporations -- health maintenance organizations -- governmental insurance programs -- service contracts. (1) A person may not transact a business of insurance in Montana or a business relative to a subject resident, located, or to be performed in Montana without complying with the applicable provisions of this code.

(2) The provisions of this code do not apply with respect to:

(a) domestic farm mutual insurers as identified in chapter 4, except as stated in chapter 4;

(b) domestic benevolent associations as identified in chapter 6, except as stated in chapter 6; and

(c) fraternal benefit societies, except as stated in chapter 7.

(3) This code applies to health service corporations as prescribed in 33-30-102. The existence of the corporations is governed by Title 35, chapter 2, and related sections of the Montana Code Annotated.

(4) This code does not apply to health maintenance organizations or to managed care community networks, as defined in 53-6-702, to the extent that the existence and operations of those organizations are governed by chapter 31 or to the extent that the existence and operations of those networks are governed by Title 53, chapter 6, part 7. The department of public health and human services is responsible to protect the interests of consumers by providing complaint, appeal, and grievance procedures relating to managed care community networks and health maintenance organizations under contract to provide services under Title 53, chapter 6.

(5) ~~This~~ Except as expressly provided, this code does not apply to workers' compensation insurance ~~programs~~ plan No. 1, provided for in Title 39, chapter 71, ~~parts~~ part 21, ~~and~~ or plan No. 3, the state fund, provided for in Title 39, chapter 71, part 23~~, and related sections~~.

(6) The department of public health and human services may limit the amount, scope, and duration of services for programs established under Title 53 that are provided under contract by entities subject to this title. The department of public health and human services may establish more restrictive eligibility requirements and fewer services than may be required by this title.

(7) Except as otherwise provided in Title 33, chapter 22, this code does not apply to the state employee group insurance program established in Title 2, chapter 18, part 8.

(8) This code does not apply to insurance funded through the state self-insurance reserve fund provided for in 2-9-202.

(9) (a) Except as otherwise provided in Title 33, chapter 22, this code does not apply to any arrangement, plan, or interlocal agreement between political subdivisions of this state in which the political subdivisions undertake to separately or jointly indemnify one another by way of a pooling, joint retention, deductible, or self-insurance plan.

(b) Except as otherwise provided in Title 33, chapter 22, this code does not apply to any arrangement, plan, or interlocal agreement between political subdivisions of this state or any arrangement, plan, or program of a single political subdivision of this state in which the political subdivision provides to its officers, elected officials, or employees disability insurance or life insurance through a self-funded program.

(10) (a) This code does not apply to the marketing of, sale of, offering for sale of, issuance of, making of, proposal to make, and administration of a service contract.

(b) A "service contract" means a contract or agreement for a separately stated consideration for a specific duration to perform the repair, replacement, or maintenance of property or to indemnify for the repair, replacement, or maintenance of property if an operational or structural failure is due to a defect in materials or

manufacturing or to normal wear and tear, with or without an additional provision for incidental payment or indemnity under limited circumstances, including but not limited to towing, rental, and emergency road service. A service contract may provide for the repair, replacement, or maintenance of property for damage resulting from power surges or accidental damage from handling. A service contract does not include motor club service as defined in 61-12-301.

(11) (a) Subject to 33-18-201 and 33-18-242, this code does not apply to insurance for ambulance services sold by a county, city, or town or to insurance sold by a third party if the county, city, or town is liable for the financial risk under the contract with the third party as provided in 7-34-103.

(b) If the financial risk for ambulance service insurance is with an entity other than the county, city, or town, the entity is subject to the provisions of this code."

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

"33-2-708. (Temporary) Fees and licenses. (1) (a) Except as provided in 33-17-212(2), the commissioner shall collect a fee of $1,900 from each insurer applying for or annually renewing a certificate of authority to conduct the business of insurance in Montana. The commissioner also shall annually collect a fee of $1,900 from the state compensation insurance fund.

(b) The commissioner shall collect certain additional fees as follows:

(i) nonresident insurance producer's license:

(A) application for original license, including issuance of license, if issued, $100;

(B) biennial renewal of license, $50;

(C) lapsed license reinstatement fee, $100;

(ii) resident insurance producer's license lapsed license reinstatement fee, $100;

(iii) surplus lines insurance producer's license:

(A) application for original license and for issuance of license, if issued, $50;

(B) biennial renewal of license, $100;

(C) lapsed license reinstatement fee, $200;

(iv) insurance adjuster's license:

(A) application for original license, including issuance of license, if issued, $50;

(B) biennial renewal of license, $100;

(C) lapsed license reinstatement fee, $200;

(v) insurance consultant's license:

(A) application for original license, including issuance of license, if issued, $50;

(B) biennial renewal of license, $100;

(C) lapsed license reinstatement fee, $200;

(vi) viatical settlement broker's license:

(A) application for original license, including issuance of license, if issued, $50;

(B) biennial renewal of license, $100;

(C) lapsed license reinstatement fee, $200;

(vii) resident and nonresident rental car entity producer's license:

(A) application for original license, including issuance of license, if issued, $100;

(B) quarterly filing fee, $25;

(viii) an original notification fee for a life insurance producer acting as a viatical settlement broker, in accordance with 33-20-1303(2)(b), $50;

(ix) 50 cents for each page for copies of documents on file in the commissioner's office.

(c) The commissioner may adopt rules to determine the date by which a nonresident insurance producer, a surplus lines insurance producer, an insurance adjuster, or an insurance consultant is required to pay the fee for the biennial renewal of a license.

(2) (a) The commissioner shall charge a fee of $75 for each course or program submitted for review as required by 33-17-1204 and 33-17-1205, but may not charge more than $1,500 to a sponsoring organization submitting courses or programs for review in any biennium.

(b) Insurers and associations composed of members of the insurance industry are exempt from the charge in subsection (2)(a).

(3) (a) Except as provided in subsection (3)(b), the commissioner shall promptly deposit with the state treasurer to the credit of the general fund all fines and penalties and those amounts received pursuant to 33-2-311, 33-2-705, 33-28-201, and 50-3-109.

(b) The commissioner shall deposit 16.67% of the money collected under 33-2-705 in the special revenue account provided for in 53-4-1115.

(c) All other fees collected by the commissioner pursuant to Title 33 and the rules adopted under Title 33 must be deposited in the state special revenue fund to the credit of the state auditor's office.

(4) All fees are considered fully earned when received. In the event of overpayment, only those amounts

in excess of $10 will be refunded. (Terminates June 30, 2013--sec. 35(2), Ch. 486, L. 2009.)

33-2-708. (Effective July 1, 2013) Fees and licenses. (1) (a) Except as provided in 33-17-212(2), the commissioner shall collect a fee of $1,900 from each insurer applying for or annually renewing a certificate of authority to conduct the business of insurance in Montana. The commissioner also shall annually collect a fee of $1,900 from the state compensation insurance fund.

(b) The commissioner shall collect certain additional fees as follows:

(i) nonresident insurance producer's license:

(A) application for original license, including issuance of license, if issued, $100;

(B) biennial renewal of license, $50;

(C) lapsed license reinstatement fee, $100;

(ii) resident insurance producer's license lapsed license reinstatement fee, $100;

(iii) surplus lines insurance producer's license:

(A) application for original license and for issuance of license, if issued, $50;

(B) biennial renewal of license, $100;

(C) lapsed license reinstatement fee, $200;

(iv) insurance adjuster's license:

(A) application for original license, including issuance of license, if issued, $50;

(B) biennial renewal of license, $100;

(C) lapsed license reinstatement fee, $200;

(v) insurance consultant's license:

(A) application for original license, including issuance of license, if issued, $50;

(B) biennial renewal of license, $100;

(C) lapsed license reinstatement fee, $200;

(vi) viatical settlement broker's license:

(A) application for original license, including issuance of license, if issued, $50;

(B) biennial renewal of license, $100;

(C) lapsed license reinstatement fee, $200;

(vii) resident and nonresident rental car entity producer's license:

(A) application for original license, including issuance of license, if issued, $100;

(B) quarterly filing fee, $25;

(viii) an original notification fee for a life insurance producer acting as a viatical settlement broker, in accordance with 33-20-1303(2)(b), $50;

(ix) 50 cents for each page for copies of documents on file in the commissioner's office.

(c) The commissioner may adopt rules to determine the date by which a nonresident insurance producer, a surplus lines insurance producer, an insurance adjuster, or an insurance consultant is required to pay the fee for the biennial renewal of a license.

(2) (a) The commissioner shall charge a fee of $75 for each course or program submitted for review as required by 33-17-1204 and 33-17-1205, but may not charge more than $1,500 to a sponsoring organization submitting courses or programs for review in any biennium.

(b) Insurers and associations composed of members of the insurance industry are exempt from the charge in subsection (2)(a).

(3) (a) Except as provided in subsection (3)(b), the commissioner shall promptly deposit with the state treasurer to the credit of the general fund all fines and penalties and those amounts received pursuant to 33-2-311, 33-2-705, 33-28-201, and 50-3-109.

(b) The commissioner shall deposit 33% of the money collected under 33-2-705 in the special revenue account provided for in 53-4-1115.

(c) All other fees collected by the commissioner pursuant to Title 33 and the rules adopted under Title 33 must be deposited in the state special revenue fund to the credit of the state auditor's office.

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

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

"33-16-303. Use of rates, rating systems, underwriting rules, and policy or bond forms of rating or advisory organizations -- agreements to adhere to. (1) Members and subscribers of rating or advisory organizations may use the rates, rating systems, underwriting rules, or policy or bond forms of those organizations, either consistently or intermittently, but, except as provided in 33-16-105, 33-16-302, 33-16-305, 33-16-307, 33-16-1008, ~~and~~ 33-16-1020 through 33-16-1023, and 33-16-1025 through 33-16-1036, may not agree with each other or rating organizations or others to adhere to the organizations' rates, systems, rules, or policy or bond forms.

(2) The fact that two or more admitted insurers, whether or not members or subscribers of a rating or

advisory organization, use, either consistently or intermittently, the rates or rating systems made or adopted by a rating organization or the underwriting rules or policy or bond forms prepared by a rating or advisory organization is not sufficient in itself to support a finding that an agreement prohibited under subsection (1) exists and may be used only for the purpose of supplementing or explaining direct evidence of the existence of any agreement."

Section 4. Section 33-16-1001, MCA, is amended to read:

"33-16-1001. Declaration of policy and purpose. (1) It is declared that the public welfare is served by the making of advisory premium rates for workers' compensation insurance coverage in concert. The public welfare also is best served by providing a payment system that balances premiums against costs in such a way that ensures system solvency without great additional cost to the employer and that recognizes costs or savings resulting from regulatory changes or court decisions.

(2) It is the purpose of this part to:

(a) authorize such ratemaking in concert and the operating of rating organizations ~~thereto~~ for workers' compensation; and

(b) establish the general bases and standards for the making of such rates."

Section 5. Section 33-16-1002, MCA, is amended to read:

"33-16-1002. Applicability of part. (1) This part, together and in conjunction with parts 1 through 4 of this chapter, applies to the making of premium rates for workers' compensation insurance issued under compensation plan No. 2 of the Workers' Compensation Act, Title 39, chapter 71, part 22, or related employer's liability insurance~~, but~~.

(2) Unless specifically stated otherwise, this part, not in conjunction with parts 1 through 4 of this chapter but in conjunction with Title 39, chapter 71, part 23, applies to the making of premium rates for workers' compensation insurance issued under plan No. 3, the state fund, provided for in Title 39, chapter 71, part 23, or related employer's liability insurance.

(3) This part does not apply to reinsurance."

Section 6. Section 33-16-1008, MCA, is amended to read:

"33-16-1008. Definitions. As used in this part, the following definitions apply:

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

(2) (a) "Advisory organization" means a person or organization that either has two or more member insurers or is controlled either directly or indirectly by two or more insurers and that assists insurers in ratemaking-related activities.

(b) The term does not include a joint underwriting association, any actuarial or legal consultant, or any employee of an insurer or insurers under common control or management or their employees or manager.

(c) As used in this subsection (2), two or more insurers who have a common ownership or operate in this state under common management or control constitute a single insurer.

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

(4) "Contingencies" means provisions in rates to recognize the uncertainty of the estimates of losses, loss adjustment expenses, other operating expenses, and investment income and profit that comprise those rates. The provisions may be explicit, including but not limited to a specific charge to reflect systematic variations of estimated costs from expected costs, or implicit, including but not limited to a consideration in selecting a single estimate from a reasonable range of estimates, or both.

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

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

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

(8) "Insurer" means a person licensed to write workers' compensation insurance as a plan No. 2 or as a plan No. 3, the state compensation insurance fund, insurer under the laws of the state.

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

(10) "Market" means the interaction in this state between buyers and plan No. 2 sellers of workers'

compensation and employer's liability insurance pursuant to the provisions of this part.

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

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

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

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

(b) The term does not include minimum premiums.

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

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

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

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

Section 7. Section 33-16-1012, MCA, is amended to read:

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

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

(b) make the final determination regarding the establishment or revision of all classifications in

accordance with the procedures set forth in Title 2, chapter 4, part 3;. The classifications must include classifications for state agencies, municipal government, community service workers, and a single classification for agriculture for use by plan No. 2 and plan No. 3 insurers.

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

(d) act as a review committee concerning objections filed by a policyholder or insurer in relation to classifications assigned to a policyholder according to rules governing the issuance or application of classifications; and

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

(2) (a) The initial hearing conducted by the committee pursuant to subsection (1)(d) must be informal and nonbinding upon the parties and must be conducted pursuant to rules of procedure that the committee considers to be appropriate. The committee shall issue its written advisory decision within 30 days of the conclusion of the hearing and send a written copy of the decision by first-class mail, postage prepaid, to each party. Each party to the informal hearing shall notify the committee and each other party of the notifying party's intent to be bound or not bound by the committee's advisory decision, and the notice must be made within 30 days of the date the committee mails the written copy of the decision to the parties.

(b) A party who is aggrieved by the advisory decision of the committee, or by the refusal of a party to be bound by the committee's advisory decision rendered after a hearing conducted pursuant to subsection (2)(a) may, within 30 days after the expiration of the 30-day notice deadline specified in subsection (2)(a), initiate an informal contested case proceeding pursuant to 2-4-604 before the committee, and the committee shall hear the matter in a de novo administrative proceeding as provided in Title 2, chapter 4, part 6. The committee may, in its discretion or at the request of any party, appoint a hearings examiner. If a hearings examiner is appointed, the examiner shall take evidence and prepare proposed findings of fact and conclusions of law that the committee may accept, reject, or modify, in whole or in part, based on the evidence produced during the informal contested case proceeding.

(c) A party who is aggrieved by a decision of the committee rendered after a hearing conducted pursuant to subsection (2)(b) may petition the workers' compensation court for judicial review of the decision pursuant to Title 2, chapter 4, part 7.

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

NEW SECTION. **Section 8. Premium rates for construction industry.** (1) With respect to each classification of risk in the construction industry, the advisory organization designated under 33-16-1023 shall file with the commissioner of insurance a method of computing premiums that does not impose a higher insurance premium solely because of an employer's higher rate of wages paid.

(2) The commissioner shall accept a filing under subsection (1) that includes a reasonable method of recognizing differences in rates of pay. This method must use a credit scale with the starting point set at 1.168 times the state's average weekly wage as defined in 39-71-116.

(3) The advisory organization shall file a revenue neutral plan for new and renewed policies for prompt and orderly transition to a method of computing premiums that is in compliance with the requirements of this section.

Section 9. Section 33-16-1021, MCA, is amended to read:

"33-16-1021. Ratemaking standards -- review by commissioner. (1) Rates may not be excessive, inadequate, or unfairly discriminatory.

(2) Rates in a competitive market are not excessive. Rates in a noncompetitive market are excessive if they are likely to produce a long-run profit that is unreasonably high in relation to services rendered. A rate may be excessive if the rate fails to incorporate the loss cost ratio recommended by the designated advisory organization to reflect savings from statutory or regulatory changes or court decisions.

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

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

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

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

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

(5) In determining whether rates comply with standards under subsection (1), consideration must be

given to:

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

(b) catastrophe hazards and contingencies;

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

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

(e) a reasonable margin, whenever applicable for insurers under compensation plan No. 2, for underwriting profit; and

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

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

(7) The rate may contain provisions of contingencies and for plan No. 2 insurers an allowance permitting a reasonable profit. In determining the reasonableness of a profit, consideration must be given to all investment income attributable to premiums and the reserves associated with those premiums.

(8) The rate filed by plan No. 3, the state fund, must be set at amounts sufficient, when invested, to carry the estimated cost of all claims to maturity, to meet the reasonable expenses of conducting the business of the state fund, and to amass and maintain an excess of surplus as determined by the board under 39-71-2330.

~~(8)~~(9) The commissioner may investigate and determine whether rates in Montana are excessive, inadequate, or unfairly discriminatory. In any investigation and determination, the commissioner shall also consider the factors specified in 33-16-1020."

Section 10. Section 33-16-1026, MCA, is amended to read:

"33-16-1026. Rate filings. (1) A workers' compensation advisory organization shall file with the commissioner:

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

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

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

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

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

(2) Each insurer shall file with the commissioner all rates, supplementary rate information, and any changes and amendments made by it for use in this state as required by the commissioner under 33-16-1027(2).

(3) An insurer may establish rates and supplementary rate information based upon the factors in 33-16-1021. An insurer may adopt by reference, with or without deviation, the prospective loss costs filed by the advisory organization designated under 33-16-1023 or the rates and supplementary rate information filed by another insurer.

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

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

(6) If each rate in a schedule of workers' compensation rates for specific classifications of risks filed by an insurer is not lower than the prospective loss costs contained in the schedule of workers' compensation rates for those classifications filed by the designated advisory organization under subsection (1), the schedule of rates filed by the insurer is not subject to 33-16-1027(1) but becomes effective upon filing.

(7) A rate that does not reflect a regulatory or statutory change determined by the designated advisory organization to lower the loss cost ratio is subject to 33-16-1027 unless the insurer provides in a supplemental filing a rationale for not reflecting the change."

Section 11. Section 33-16-1035, MCA, is amended to read:

"33-16-1035. Penalties -- suspension of license. (1) The commissioner may impose upon a person or organization that violates 33-16-1020 through 33-16-1023 or 33-16-1025 through 33-16-1036 a penalty of not more than $500 for each violation.

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

(3) (a) ~~The~~ Except as provided in subsection (3)(b), the commissioner may suspend the license of an insurer or an advisory organization that fails to comply with any order within the time set by the order or extension granted by the commissioner. The commissioner may not suspend a license for failure to comply with an order until the time prescribed for appeal from the order has expired or, if appealed, until the order has been affirmed. The commissioner may determine the period of a suspension, which remains in effect for the period unless

modified or rescinded or until the order upon which the suspension is based is modified, rescinded, or reversed.

(b) The commissioner may not take any action under this part against a plan No. 3 insurer, the state compensation insurance fund, but may impose the other penalties described in subsections (1) and (2).

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

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

Section 12. Section 39-71-403, MCA, is amended to read:

"39-71-403. Plan three exclusive for state agencies -- election of plan by public corporations -- financing of self-insurance fund -- exemption for university system -- definitions -- rulemaking. (1) (a) Except as provided in subsection (5), if a state agency is the employer, the terms, conditions, and provisions of compensation plan No. 3, state fund, are exclusive, compulsory, and obligatory upon both employer and employee. Any sums necessary to be paid under the provisions of this chapter by a state agency are considered to be ordinary and necessary expenses of the agency. The agency shall pay the sums into the state fund at the time and in the manner provided for in this chapter, notwithstanding that the state agency may have failed to anticipate the ordinary and necessary expense in a budget, estimate of expenses, appropriations, ordinances, or otherwise.

(b) (i) Subject to subsection (5), the department of administration, provided for in 2-15-1001, shall manage workers' compensation insurance coverage for all state agencies.

(ii) The state fund shall provide the department of administration with all information regarding the state agencies' coverage.

(iii) Notwithstanding the status of a state agency as employer in subsection (1)(a) and contingent upon mutual agreement between the department of administration and the state fund, the state fund shall issue one or more policies for all state agencies.

(iv) In any year in which the designated advisory organization provided for in 33-16-1023 files a loss cost ratio lower than the previous year, directly attributable to statutory or regulatory changes or court decisions, and the state fund reflects that loss cost ratio in its premiums, the money budgeted and appropriated for projected

spending by a state agency, if greater than the actual spending, must be returned to the originating fund instead of being applied to other purposes by the state agency submitting the premium.

(2) A public corporation, other than a state agency, may elect coverage under compensation plan No. 1, plan No. 2, or plan No. 3, separately or jointly with any other public corporation, other than a state agency. A public corporation electing compensation plan No. 1 may purchase reinsurance or issue bonds or notes pursuant to subsection (3)(b). A public corporation electing compensation plan No. 1 is subject to the same provisions as a private employer electing compensation plan No. 1.

(3) (a) A public corporation, other than a state agency, that elects plan No. 1 may establish a fund sufficient to pay the compensation and benefits provided for in this chapter and to discharge all liabilities that are reasonably incurred during the fiscal year for which the election is effective. Proceeds from the fund must be used only to pay claims covered by this chapter and for actual and necessary expenses required for the efficient administration of the fund, including debt service on any bonds and notes issued pursuant to subsection (3)(b).

(b) (i) A public corporation, other than a state agency, separately or jointly with another public corporation, other than a state agency, may issue and sell its bonds and notes for the purpose of establishing, in whole or in part, the self-insurance workers' compensation fund provided for in subsection (3)(a) and to pay the costs associated with the sale and issuance of the bonds. Bonds and notes may be issued in an amount not exceeding 0.18% of the total assessed value of taxable property, determined as provided in 15-8-111, of the public corporation as of the date of issue. The bonds and notes must be authorized by resolution of the governing body of the public corporation and are payable from an annual property tax levied in the amount necessary to pay principal and interest on the bonds or notes. This authority to levy an annual property tax exists despite any provision of law or maximum levy limitation, including 15-10-420, to the contrary. The revenue derived from the sale of the bonds and notes may not be used for any other purpose.

(ii) The bonds and notes:

(A) may be sold at public or private sale;

(B) do not constitute debt within the meaning of any statutory debt limitation; and

(C) may contain other terms and provisions that the governing body determines.

(iii) Two or more public corporations, other than state agencies, may agree to exercise their respective borrowing powers jointly under this subsection (3)(b) or may authorize a joint board to exercise the powers on their behalf.

(iv) The fund established from the proceeds of bonds and notes issued and sold under this subsection

(3)(b) may, if sufficient, be used in lieu of a surety bond, reinsurance, specific and aggregate excess insurance, or any other form of additional security necessary to demonstrate the public corporation's ability to discharge all liabilities as provided in subsection (3)(a). Subject to the total assessed value limitation in subsection (3)(b)(i), a public corporation may issue bonds and notes to establish a fund sufficient to discharge liabilities for periods greater than 1 year.

(4) All money in the fund established under subsection (3)(a) not needed to meet immediate expenditures must be invested by the governing body of the public corporation or the joint board created by two or more public corporations as provided in subsection (3)(b)(iii), and all proceeds of the investment must be credited to the fund.

(5) For the purposes of subsection (1)(b), the judicial branch or the legislative branch may choose not to have the department of administration manage its workers' compensation policy.

(6) The department of administration may adopt rules to implement subsection (1)(b)(i).

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

(a) "Public corporation" includes the Montana university system.

(b) (i) "State agency" means:

(A) the executive branch and its departments and all boards, commissions, committees, bureaus, and offices;

(B) the judicial branch; and

(C) the legislative branch.

(ii) The term does not include the Montana university system."

Section 13. Section 39-71-435, MCA, is amended to read:

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

(2) The advisory organization designated under 33-16-1023 may develop and file a deductible plan or plans on behalf of its members consistent with the standards contained in subsection (3).

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

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

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

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

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

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

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

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

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

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

~~(5)~~(4) For purposes of 39-71-201 and 39-71-915, liability for assessments must be ascertained without regard to application of any deductible, whether the employer or the insurer pays the losses. For all other taxes and assessments based on premium, the amount of premium or assessment must be determined after application of the deductible."

Section 14. Section 39-71-2311, MCA, is amended to read:

"39-71-2311. Intent and purpose of plan -- expense constant defined. (1) It is the intent and purpose of the state fund to allow employers an option to insure their liability for workers' compensation and occupational disease coverage with the state fund. The state fund must be neither more nor less than self-supporting. Premium rates must be set at least annually, in accordance with 39-71-2330 [and through June 30, 2013, in accordance with [section 22]], at a level sufficient to ensure the adequate funding of the insurance program, including the

costs of administration, benefits, and adequate reserves, during and at the end of the period for which the rates will be in effect. In determining premium rates, the state fund shall make every effort to adequately predict future costs. When the costs of a factor influencing rates are unclear and difficult to predict, the state fund shall use a prediction calculated to be more than likely to cover those costs rather than less than likely to cover those costs. The prediction must take into account the goal of pooling risk and may not place an undue burden on employers that are not eligible for the tier with the lowest-rated premium for workers' compensation purposes.

(2) Unnecessary surpluses that are created by the imposition of premiums found to have been set higher than necessary because of a high estimate of the cost of a factor or factors may be refunded by the declaration of a dividend as provided in this part. For the purpose of keeping the state fund solvent, the board ~~of directors~~ may implement multiple rating tiers as provided in 39-71-2330 and may assess an expense constant, a minimum premium, or both.

(3) As used in this section, "expense constant" means a premium charge applied to each workers' compensation policy to pay expenses related to issuing, servicing, maintaining, recording, and auditing the policy."

Section 15. Section 39-71-2314, MCA, is amended to read:

"39-71-2314. State fund subject to laws applying to state agencies. The state fund is subject to laws that generally apply to state agencies, including but not limited to Title 2, chapters 2, 3, 4 ~~(only as provided in 39-71-2316)~~, and 6, and Title 5, chapter 13. The state fund is not exempt from a law that applies to state agencies unless that law specifically exempts the state fund by name and clearly states that it is exempt from that law."

Section 16. Section 39-71-2315, MCA, is amended to read:

"39-71-2315. Management of state fund -- powers and duties of the board -- business plan required. (1) (a) ~~The~~ Except as provided in subsection (1)(b), the management and control of the state fund is vested ~~solely~~ in the board.

(b) The authority to determine whether state fund rates are excessive, inadequate, or unfairly discriminatory is vested in the insurance commissioner under 33-16-1021.

(2) ~~The~~ Except as provided in subsection (1)(b), the board is vested with ~~full~~ power, authority, and jurisdiction over the state fund. The board may perform all acts necessary or convenient in the exercise of ~~any~~ its power, authority, or jurisdiction over the state fund~~, either~~ in the administration of the state fund ~~or in~~. In

connection with the insurance business to be carried on under Title 33, chapter 16, part 10, and the provisions of this part~~, as fully and completely~~, the board shall act, unless otherwise provided by statute, as the governing body of a private mutual insurance carrier, ~~in order~~ to fulfill the objectives and intent of this part. Bonds may not be issued by the board, the state fund, or the executive director.

(3) The board shall adopt a business plan no later than June 30 for the next fiscal year. At a minimum, the plan must include:

(a) specific goals for the fiscal year for financial performance. The standard for measurement of financial performances must include an evaluation of premium to surplus.

(b) specific goals for the fiscal year for operating performance. Goals must include but not be limited to specific performance standards for staff in the area of senior management, underwriting, and claims administration. Goals must, in general, maximize efficiency, economy, and equity as allowed by law.

(4) The business plan must be available upon request to the general public for a fee not to exceed the actual cost of publication. However, performance goals relating to a specific employment position are confidential and not available to the public.

(5) No sooner than July 1 or later than October 31, the board shall convene a public meeting to review the performance of the state fund, using the business plan for comparison of all the established goals and targets. The board shall publish, by November 30 of each year, a report of the state fund's actual performance as compared to the business plan.

(6) The ~~state fund~~ board ~~of directors~~ shall establish in-house guidelines for procurement of insurance-related services and shall include guidelines for the solicitation of submissions of information regarding insurance-related services from more than one vendor. The board may include guidelines for the circumstances when business necessity or expedience may preclude the solicitation of submissions from more than one vendor. The board may also include in the guidelines the exemptions to the procurement process in 18-4-132."

Section 17. Section 39-71-2316, MCA, is amended to read:

"39-71-2316. Powers of state fund. (1) For the purposes of carrying out its functions, the state fund may:

(a) insure any employer for workers' compensation and occupational disease liability as the coverage is required by the laws of this state and, as part of the coverage, provide related employers' liability insurance upon approval of the board;

(b) sue and be sued;

(c) enter into contracts relating to the administration of the state fund, including claims management, servicing, and payment;

(d) collect and disburse money received;

(e) adopt classifications established as provided in 33-16-1012 and charge premiums for the classifications so that the state fund will be neither more nor less than self-supporting. Premium rates for classifications may be adopted and changed only by using ~~a~~ the process, ~~a~~ procedure, formulas, and factors set forth in ~~rules adopted under Title 2, chapter 4, parts 2 through 4. After the rules have been adopted, the state fund need not follow the rulemaking provisions of Title 2, chapter 4, when changing classifications and premium rates. The contested case rights and provisions of Title 2, chapter 4, do not apply to an employer's classification or premium rate~~ Title 33, chapter 16, part 10, and rules implementing Title 33, chapter 16, part 10. The state fund ~~is required to belong to a~~ must be a member or subscriber of the licensed workers' compensation advisory organization ~~or a licensed workers' compensation rating organization under Title 33, chapter 16, part 4,~~ determined under 33-16-1023 and ~~may~~ shall use the classifications of employment adopted by the designated workers' compensation advisory organization, as provided ~~in Title 33, chapter 16, part 10, and corresponding rates as a basis for setting its own rates~~ 33-16-1012. Except as provided in Title 33, chapter 16, part 10, a workers' compensation advisory organization or a licensed workers' compensation rating organization under Title 33, chapter 16, part 4, or other person may not, without first obtaining the written permission of the employer, use, sell, or distribute an employer's specific payroll or loss information, including but not limited to experience modification factors.

(f) pay the amounts determined to be due under a policy of insurance issued by the state fund;

(g) hire personnel;

(h) declare dividends if there is an excess of assets over liabilities. ~~However, dividends~~ Dividends must be proportionately distributed among policyholders, taking into account loss experience and premiums paid. Dividends may not be paid until adequate actuarially determined reserves are set aside.

(i) adopt and implement one or more alternative personal leave plans pursuant to 39-71-2328;

(j) upon approval of the board, contract with licensed resident insurance producers;

(k) upon approval of the board, enter into agreements with licensed workers' compensation insurers, insurance associations, or insurance producers to provide workers' compensation coverage in other states to Montana-domiciled employers insured with the state fund;

(l) upon approval of the board, expend funds for scholarship, educational, or charitable purposes;

(m) upon approval of the board, including terms and conditions, provide employers coverage under the federal Longshore and Harbor Workers' Compensation Act, 33 U.S.C. 901, et seq., the federal Merchant Marine Act, 1920 (Jones Act), 46 U.S.C. 688, and the federal Employers' Liability Act, 45 U.S.C. 51, et seq.;

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

(2) The state fund shall include a provision in every policy of insurance issued pursuant to this part that incorporates the restriction on the use and transfer of money collected by the state fund as provided for in 39-71-2320."

Section 18. Section 39-71-2330, MCA, is amended to read:

"39-71-2330. Rate setting -- surplus -- multiple rating tiers. (1) ~~The~~ Subject to [section 22], the board has the authority to establish the rates to be charged by the state fund for insurance. The board shall engage the services of an independent actuary who is a member in good standing with the American academy of actuaries to develop and recommend actuarially sound rates. Rates must be set at amounts sufficient, when invested, to carry the estimated cost of all claims to maturity, to meet the reasonable expenses of conducting the business of the state fund, and to amass and maintain an excess of surplus over the amount produced by the national association of insurance commissioners' risk-based capital company action level requirements for a casualty insurer.

(2) Because surplus is desirable in the insurance business, the board shall annually determine the level of surplus that must be maintained by the state fund pursuant to this section, but shall maintain a minimum surplus of 25% of annual earned premium. The state fund shall use the amount of the surplus above the risk-based capital company action level requirements to secure the state fund against various risks inherent in or affecting the business of insurance and not accounted for or only partially measured by the risk-based capital company action level requirements.

(3) The board may implement multiple rating tiers for classifications that take into consideration losses, premium size, and other factors relevant in placing an employer within a rating tier."

Section 19. Section 39-71-2330, MCA, is amended to read:

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has the authority to establish the rates to be charged by the state fund for insurance. The board shall engage the services of an independent actuary who is a member in good standing with the American academy of actuaries to develop and recommend actuarially sound rates. Rates must be set at amounts sufficient, when invested, to carry the estimated cost of all claims to maturity, to meet the reasonable expenses of conducting the business of the state fund, and to amass and maintain an excess of surplus over the amount produced by the national association of insurance commissioners' risk-based capital company action level requirements for a casualty insurer.

(2) Because surplus is desirable in the insurance business, the board shall annually determine the level of surplus that must be maintained by the state fund pursuant to this section, but shall maintain a minimum surplus of 25% of annual earned premium. The state fund shall use the amount of the surplus above the risk-based capital company action level requirements to secure the state fund against various risks inherent in or affecting the business of insurance and not accounted for or only partially measured by the risk-based capital company action level requirements.

(3) The board may implement multiple rating tiers for classifications that take into consideration losses, premium size, and other factors relevant in placing an employer within a rating tier."

Section 20. Section 39-71-2351, MCA, is amended to read:

"39-71-2351. Purpose of separation of state fund liability as of July 1, 1990, and of separate funding of claims before and on or after that date. (1) An unfunded liability exists in the state fund. It has existed since at least the mid-1980s and has grown each year. There have been numerous attempts to solve the problem by legislation and other methods. These attempts have alleviated the problem somewhat, but the problem has not been solved.

(2) The legislature has determined that it is necessary to the public welfare to make workers' compensation insurance available to all employers through the state fund as the insurer of last resort. In making this insurance available, the state fund has incurred the unfunded liability. The legislature has determined that the most cost-effective and efficient way to provide a source of funding for and to ensure payment of the unfunded liability and the best way to administer the unfunded liability is to separate the liability of the state fund on the basis of whether a claim is for an injury resulting from an accident that occurred before July 1, 1990, or an accident that occurs on or after that date.

(3) The legislature further determines that in order to prevent the creation of a new unfunded liability with

respect to claims for injuries for accidents that occur on or after July 1, 1990, ~~certain duties of the state fund should be clarified and legislative~~ oversight and regulation of the state fund ~~should be increased~~ as an insurer is best handled by the commissioner of insurance provided for in Title 33."

NEW SECTION. **Section 21. Examinations.** (1) The insurance commissioner provided for in Title 33 shall examine the affairs, records, accounts, transactions, and assets of the state fund as necessary to ascertain its financial condition, its ability to fulfill its obligations, its claim reservation process to determine if reserving for developed losses as defined in 33-16-1008 is routinely above or below paid claims, and whether it has complied with the provisions of this chapter. The examination may not be less than every 5 years and must be carried out as provided in 33-1-401, 33-1-408 through 33-1-410, 33-1-413(1) and (2), and 33-16-1020(2)(g).

(2) The cost of the examination in subsection (1) is an expense of and must be paid by the state fund. The state fund may coordinate with the insurance commissioner for the timing of the examinations to apportion the costs of business over time and not directly to premiums in any 1 year.

(3) The commissioner may not take any action to suspend, revoke, or liquidate assets of the state fund as a result of an examination but shall report findings to the governor and to the legislature.

NEW SECTION. **Section 22. Transition ratemaking.** (1) Except as provided in subsection (2), until July 1, 2013, at each board meeting subsequent to the filing of a loss costs rate or rating plan by the advisory organization designated pursuant to 33-16-1023, the board shall adopt a rate that matches the net percentage rate decrease or increase filed by the designated advisory organization.

(2) If a decrease in the loss costs rate or rating plan would cause the surplus to fall below 25% of the annual earned premium, the board shall adopt rates that allow a surplus of no more than 25% of the annual earned premium.

(3) The board shall meet at a time that allows adoption of a rate for policies issued or renewed on or after July 1, 2011, and shall adopt rates as provided in subsection (1) and subject to subsection (2) that incorporates the percentage loss costs rate or rating plan filed by the advisory organization designated pursuant to 33-16-1023 for the policies issued on or renewed by July 1, 2011.

NEW SECTION. **Section 23. Repealer.** The following sections of the Montana Code Annotated are repealed:

33-16-1024. Plan No. 3 membership in licensed workers' compensation advisory organization -- reporting requirements.

39-71-2362. Authority of legislative auditor with respect to state fund.

NEW SECTION. **Section 24. Codification instruction.** (1) [Section 8] is intended to be codified as an integral part of Title 33, chapter 16, part 10, and the provisions of Title 33, chapter 16, part 10, apply to [section 8].

(2) [Sections 21 and 22] are intended to be codified as an integral part of Title 39, chapter 71, part 23, and the provisions of Title 39, chapter 71, part 23, apply to [sections 21 and 22].

NEW SECTION. **Section 25. Effective dates -- applicability dates.** (1) Except as provided in subsections (2) and (3), [this act] is effective July 1, 2013, and applies to policies issued or renewed on or after July 1, 2013.

(2) [Sections 4 and 12] are effective July 1, 2011, and apply to policies issued on or after July 1, 2011.

(3) [Sections 7, 10, 14, 18, 22, and 24 through 27] are effective on passage and approval.

(4) [Section 22] applies to policies issued on or after July 1, 2011.

NEW SECTION. **Section 26. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 27. Termination.** [Sections 18 and 22] and the bracketed language in [section 14] terminate July 1, 2013.

- END -