AN ACT GENERALLY REVISING THE INSURANCE LAWS; PROVIDING THAT PHARMACY, OPTICAL, AND DENTAL DISCOUNT CARDS MUST STATE THAT THE DISCOUNT IS NOT INSURANCE; PROVIDING THAT THE COMMISSIONER OF INSURANCE MAY REQUEST BIOGRAPHICAL INFORMATION FROM OFFICERS OF FARM MUTUAL ASSOCIATIONS, RECIPROCAL INSURERS, HEALTH SERVICE CORPORATIONS, AND HEALTH MAINTENANCE ORGANIZATIONS; REQUIRING HEALTH SERVICE ORGANIZATIONS TO FILE A COPY OF ARTICLES OF AMENDMENT WITH THE COMMISSIONER; PROVIDING FOR A STATUTORY TIME LIMIT FOR ACTING ON VIOLATIONS; PROHIBITING INSURANCE PRODUCERS CONNECTED TO LONG-TERM CARE FACILITIES FROM SELLING LIFE OR DISABILITY POLICIES TO RESIDENTS; EXEMPTING SERVICE CONTRACTS FROM THE INSURANCE CODE; PROVIDING THAT MECHANICAL BREAKDOWN INSURANCE, PREPAID LEGAL INSURANCE, INVOLUNTARY UNEMPLOYMENT INSURANCE, AND GAP INSURANCE ARE TYPES OF CASUALTY INSURANCE; REVISING THE PRIORITY OF THE DISTRIBUTION OF CLAIMS; INCREASING THE AMOUNT OF SURPLUS FUNDS PROVIDED FOR CERTAIN INSURERS; REQUIRING THE COMMISSIONER TO EXAMINE HEALTH MAINTENANCE ORGANIZATIONS OPERATED BY INSURERS OR HEALTH SERVICE CORPORATIONS AT LEAST ONCE EVERY 5 YEARS; AMENDING SECTIONS 17-2-121, 33-1-102, 33-1-206, 33-1-214, 33-1-215, 33-1-216, 33-1-217, 33-1-311, 33-1-313, 33-1-314, 33-1-315, 33-1-316, 33-1-601, 33-1-701, 33-1-711, 33-2-307, 33-2-313, 33-2-316, 33-2-708, 33-2-1363, 33-2-1371, 33-2-1388, 33-3-203, 33-3-302, 33-3-303, 33-4-101, 33-4-407, 33-5-401, 33-10-102, 33-12-103, 33-12-202, 33-12-203, 33-12-212, 33-14-202, 33-15-414, 33-16-102, 33-16-403, 33-17-502, 33-17-1001, 33-17-1103, 33-17-1204, 33-19-406, 33-20-1201, 33-20-1209, 33-20-1210, 33-20-1211, 33-20-1212, 33-22-508, 33-22-701, 33-22-702, 33-22-703, 33-22-704, 33-22-1002, 33-22-1003, 33-22-1810, 33-25-301, 33-30-102, 33-30-107, 33-30-108, 33-31-111, 33-31-211, 33-31-311, 33-31-401, 45-6-301, 61-12-310, AND 61-12-315, MCA; AND REPEALING SECTIONS 33-1-213, 33-1-702, 33-1-703, 33-1-704, 33-1-706, 33-2-706, 33-4-405, 33-11-106, 33-17-221, 33-17-404, 33-17-1107, 33-17-1111, 33-17-1112, 33-17-1113, 33-17-1114, AND 33-23-311, MCA.

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

Section 1. Pharmacy, optical, or dental discount cards. (1) A person may not sell, market, promote,

advertise, or otherwise distribute any pharmacy, optical, or dental discount card or other purchasing mechanism or device that is not insurance that purports to offer discounts or access to discounts when the card or other purchasing mechanism or device does not expressly state in bold and prominent type, prominently placed, that the discount is not insurance.

(2) A person violating subsection (1) is subject to a fine pursuant to 33-1-317.

Section 2. Commissioner's request of biographical information. (1) The commissioner may request from domestic insurers biographical information from officers, directors, and persons in a position to control the activity of the following entities:

(a) insurers provided for in Title 33, chapter 3;

(b) farm mutual insurers provided for in Title 33, chapter 4;

(c) reciprocal insurers provided for in Title 33, chapter 5;

(d) health service corporations provided for in Title 33, chapter 30; and

(e) health maintenance organizations provided for in Title 33, chapter 31.

(2) Officers, directors, or other persons in a position to control the activity of the entities listed in subsection (1) shall submit biographical information on a form prescribed by the commissioner.

Section 3. Health service corporation amended articles. A health service corporation shall submit a copy of any articles of amendment to the commissioner within 5 business days after the articles have been filed with the office of the secretary of state.

Section 4. Statute of limitations. (1) Unless otherwise provided by law, the department shall commence an action for a violation of the insurance code within 2 years of the date of the violation or within 2 years after the department discovers the violation or, through the use of reasonable diligence, should have discovered the violation, whichever occurs later.

(2) Regardless of when the department discovers a violation or should have discovered a violation through the use of reasonable diligence, the department may not commence an action unless it is brought within 5 years of the date of the violation.

Section 5. Prohibited relations with long-term care facility. An insurance producer that owns,

manages, supervises, operates, maintains, or works in a long-term care facility, as defined in 37-9-101, may not solicit, negotiate with, or sell a life or disability policy or certificate of insurance to a resident of a long-term care facility.

Section 6. Service of process. (1) For viatical settlement providers, the provisions of Title 33, chapter 1, part 6, apply.

(2) For viatical settlement brokers, the provisions of 33-17-405 apply.

Section 7. Section 17-2-121, MCA, is amended to read:

"17-2-121. Deposits by insurance commissioner. Except as provided in 33-2-708, all fees, miscellaneous and examination charges, fines, penalties, and those amounts received pursuant to 33-2-311, 33-2-705, ~~33-2-706,~~ or 50-3-109 collected by the insurance commissioner pursuant to Title 33 and the rules adopted to implement Title 33 must be deposited in the general fund."

Section 8. 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 code does not apply to workers' compensation insurance programs provided for in Title 39, chapter 71, parts 21 and 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) 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) 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) 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."

Section 9. Section 33-1-206, MCA, is amended to read:

"33-1-206. Casualty insurance. (1) Casualty insurance includes:

(a) vehicle insurance, which is insurance against loss of or damage to any land vehicle or aircraft or any draft or riding animal or to property while contained ~~therein~~ in or ~~thereon~~ on or being loaded or unloaded ~~therein~~ in or ~~therefrom~~ from a land vehicle, aircraft, or animal from any hazard or cause and against any loss, liability, or expense resulting from or incidental to ownership, maintenance, or use of any ~~such~~ land vehicle, aircraft, or animal, together with insurance against accidental death or accidental injury to individuals, including the named insured, while in, entering, alighting from, adjusting, or repairing~~, cranking,~~ or when caused by being struck by a land vehicle, aircraft, or draft or riding animal, if ~~such~~ the insurance is issued as an incidental part of insurance on the land vehicle, aircraft, or draft or riding animal;

(b) liability insurance, which is insurance against legal liability for the death, injury, or disability of any human being or for damage to property and the provision of medical, hospital, surgical, and disability benefits to injured persons and funeral and death benefits to dependents, beneficiaries, or personal representatives of persons killed, irrespective of legal liability of the insured, when issued as an incidental coverage with or supplemental to liability insurance;

(c) workers' compensation and employer's liability, which is insurance of the obligations accepted by, imposed upon, or assumed by employers under law for death, disablement, or injury of employees;

(d) (i) burglary and theft, which is insurance against loss or damage by burglary, theft, robbery, forgery, fraud, deceptive practices, vandalism, criminal mischief, confiscation, or wrongful conversion, disposal, or concealment or from any attempt at any of the foregoing, including supplemental coverage for medical, hospital, surgical, and funeral expense incurred by the named insured or any other person as a result of bodily injury during the commission of a burglary, robbery, or theft by another; ~~also~~ and

(ii) insurance against loss of or damage to ~~moneys~~ money, coins, bullion, securities, notes, drafts, acceptances, or any other valuable papers and documents, resulting from any cause;

(e) personal property floater, which is insurance upon personal effects against loss or damage from any cause under a personal property floater;

(f) glass, which is insurance against loss or damage to glass, including its lettering, ornamentation, and fittings;

(g) boiler and machinery, which is insurance against any liability and loss or damage to property or interest resulting from accident to or explosions of boilers, pipes, pressure containers, machinery, or apparatus and from making inspection of and issuing certificates of inspection upon boilers, machinery, and apparatus of

any kind, whether or not insured;

(h) leakage and fire extinguishing equipment, which is insurance against loss or damage to any property or interest caused by the breakage or leakage of sprinklers, hoses, pumps, and other fire extinguishing equipment or apparatus, water pipes, or containers or by water entering through leaks or openings in buildings and insurance against loss or damage to ~~such~~ the sprinklers, hoses, pumps, and other fire extinguishing equipment or apparatus;

(i) credit, which is insurance against loss or damage resulting from failure of debtors to pay their obligations to the insured;

(j) malpractice, which is insurance against legal liability of the insured and against loss, damage, or expense incidental to a claim of ~~such~~ liability, including medical, hospital, surgical, and funeral benefits to injured persons, irrespective of legal liability of the insured, arising out of the death, injury, or disablement of any person or arising out of damage to the economic interest of any person, as the result of negligence in rendering expert, fiduciary, or professional service;

(k) elevator, which is insurance against loss of or damage to any property of the insured, resulting from the ownership, maintenance, or use of elevators, except loss or damage by fire and from making inspection of and issuing certificates of inspection upon elevators;

(l) livestock, which is insurance against loss or damage to livestock and for services of a ~~veterinary~~ veterinarian for ~~such animals~~ livestock;

(m) entertainments, which is insurance indemnifying the producer of any motion picture, television, radio, theatrical, sport, spectacle, entertainment, or similar production, event, or exhibition against loss from interruption, postponement, or cancellation ~~thereof due to~~ because of death, accidental injury, or sickness of performers, participants, directors, or other principals;

(n) mechanical breakdown pursuant to 33-1-214;

(o) prepaid legal pursuant to 33-1-215;

(p) involuntary unemployment pursuant to 33-1-216;

(q) gap pursuant to 33-1-217;

~~(n)~~(r) miscellaneous, which is insurance against any other kind of loss, damage, or liability properly a subject of insurance and not within any other kind of insurance as defined in this part, if ~~such~~ the insurance is not disapproved by the commissioner as being contrary to law or public policy.

(2) Provision of medical, hospital, surgical, and funeral benefits and of coverage against accidental death

or injury as incidental to and part of other insurance as stated under subsections (1)(a) (vehicle), (1)(b) (liability), (1)(d) (burglary), and (1)(j) (malpractice) ~~of subsection (1) shall~~ must for all purposes be considered to be the same kind of insurance to which it is ~~so~~ incidental and ~~shall~~ is not ~~be~~ subject to provisions of this code applicable to life or disability insurances."

Section 10. Section 33-1-214, MCA, is amended to read:

"33-1-214. Mechanical breakdown insurance. (1) Mechanical breakdown insurance means a policy, contract, or agreement issued by an authorized insurer that provides for the repair, replacement, or service for the operational or structural failure of the property because of a defect in materials or workmanship or because of normal wear and tear.

(2) The term does not include motor club services, as defined in 61-12-301~~, or vehicle casualty insurance, as defined in 33-1-206~~.

(3) Mechanical breakdown insurance is a type of casualty insurance provided for in 33-1-206."

Section 11. Section 33-1-215, MCA, is amended to read:

"33-1-215. Prepaid legal ~~plan~~ insurance. (1) For the purposes of this section, prepaid legal ~~plan~~ insurance means the assumption of a contractual obligation that is to be spread, directly or indirectly, among a group of persons to provide specified legal services or reimbursement for legal expenses in consideration of a specified payment for an interval of time, regardless of whether the payment is made by the beneficiary or by a third person on behalf of the beneficiary.

(2) ~~A prepaid~~ Prepaid legal ~~plan~~ insurance does not include the provision of or reimbursement for legal services that are incidental to other insurance coverage. The following are not prepaid legal ~~plans~~ insurance:

(a) retainer contracts made with individual clients with fees based on estimates of the nature and amount of services that will be required;

(b) contracts made with a group of clients involved in the same or closely related legal matters;

(c) plans providing only a referral service or a discount card for legal services;

(d) legal services provided by unions or employee associations to members pertaining to employment or occupation; or

(e) legal services provided by an agency of state or federal government to employees.

(3) Prepaid legal insurance is a type of casualty insurance provided for in 33-1-206."

Section 12. Section 33-1-216, MCA, is amended to read:

"33-1-216. Involuntary unemployment insurance. (1) Involuntary unemployment insurance means insurance providing the insured borrower with coverage for consumer credit replacement obligations for a period or periods during which the borrower is involuntarily unemployed. Involuntary unemployment insurance must at least provide benefits for the loss of employment income caused by individual or mass layoff, a general strike, termination by an employer, a dispute involving organized labor, and a lockout.

(2) Involuntary unemployment insurance is a type of casualty insurance provided for in 33-1-206."

Section 13. Section 33-1-217, MCA, is amended to read:

"33-1-217. Gap amount -- gap insurance. (1) As used in this section, gap amount means the difference between the amount owed by the lessee or borrower under the purchase or lease agreement in the event of total loss of the personal property prior to the expiration of the agreement by theft or physical damage and the actual cash value or portion received by the lessor or creditor from insurance proceeds or from any other person on account of the total loss or destruction of the personal property.

(2) Gap insurance means insurance covering the gap amount that is payable upon the total loss of personal property, which is the subject of a lease or a loan or another credit transaction, occasioned by the theft of or physical damage to the property.

(3) Gap insurance is a type of casualty insurance provided for in 33-1-206."

Section 14. Section 33-1-311, MCA, is amended to read:

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

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

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

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

(5) The commissioner shall maintain as confidential any information or document received from:

(a) the national association of insurance commissioners; or

(b) an insurance department from another state or federal agency that treats the same information or document as confidential. The commissioner may provide information or documents, including information or documents that are confidential, to the national association of insurance commissioners, a state or federal law enforcement agency, a federal agency, or an insurance department in another state, if the recipient agrees to maintain the confidentiality of the information or documents.

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

Section 15. Section 33-1-313, MCA, is amended to read:

"33-1-313. Rules ~~-- notice, hearing, and penalty~~. ~~(1)~~ The commissioner may make reasonable rules necessary for or as an aid to ~~effectuation~~ the effective administration of any provision of this code. ~~No such rule shall extend, modify, or conflict with any law of this state or the reasonable implications thereof. Any such rule affecting persons or matters other than the personnel or the internal affairs of the commissioner's office shall be made or amended only after a hearing thereon of which notice was given as required by 33-1-703. If reasonably possible the commissioner shall set forth the proposed rule or amendment in or with the notice of hearing. No such rule or amendment as to which a hearing is required shall be effective until it has been on file as a public record in the commissioner's office for at least 10 days.~~

~~(2) In addition to any other penalty provided, willful violation of any such rule shall subject the violator to such administrative penalties as may be applicable under this code as for violation of the provision as to which such rule relates.~~"

Section 16. Section 33-1-314, MCA, is amended to read:

"33-1-314. Orders and notices. (1) Orders and notices of the commissioner ~~shall~~ are not ~~be~~ effective unless in writing, signed by ~~him~~ the commissioner or by ~~his~~ the commissioner's authority.

(2) ~~Every such~~ Each order ~~shall~~ must state its effective date and ~~shall~~ must concisely state:

(a) its intent or purpose;

(b) the grounds on which the order is based;

(c) the provisions of this code pursuant to ~~which~~ the action ~~is so~~ taken or proposed to be taken, but failure to ~~so~~ designate a particular provision ~~shall~~ does not deprive the commissioner of the right to rely ~~thereon~~

on a particular provision.

(3) ~~Except as may be provided in this code respecting particular procedures, an order or notice may be given by delivery to the person to be ordered or notified or by mailing it, postage prepaid, addressed to him at his principal place of business as last of record in the commissioner's office. Such order or notice shall be deemed to have been given when so mailed.~~ The commissioner may effect service of process of an order or notice by mailing it, postage prepaid, addressed to the person affected by the order or notice, to the person's principal place of business as recorded in the commissioner's office. The commissioner's order is effective when mailed. If the commissioner does not have a record of the person's principal place of business, the commissioner may effect service of process of an order or notice upon a person by mailing it, postage prepaid, to the address as listed on the person's driver's license, as ascertained by the commissioner through the motor vehicle division of the department of justice, or, if a partnership, corporation, or similar entity, as ascertained from documentation filed in the office of the secretary of state.

(4) The commissioner may have a person served pursuant to Rule 4D of the Montana Rules of Civil Procedure."

Section 17. Section 33-1-315, MCA, is amended to read:

"33-1-315. Witnesses -- production of records -- subpoena -- failure to respond ~~-- perjury~~. (1) With respect to the subject of any examination~~,~~ or investigation~~, or hearing~~ being conducted by ~~him,~~ the commissioner, or ~~his examiner~~ the commissioner's designee~~,~~ if general written authority has been given the ~~examiner~~ designee by the commissioner, the commissioner or the designee may subpoena witnesses and administer oaths or affirmations and examine any individual under oath and may require and compel the production of records, books, papers, contracts, and other documents by attachments, if necessary. ~~If in connection with any examination of an insurer the commissioner desires to examine any officer, director, or manager thereof who is then outside this state, the commissioner may conduct and enforce by all appropriate and available means any such examination under oath in any other state or territory of the United States in which such officer, director, or manager may then presently be, to the full extent permitted by the laws of such other state or territory, this special authorization considered.~~ Subpoenas of witnesses must be served in the same manner as if issued from a district court.

(2) If in connection with any examination of an insurer the commissioner desires to examine an officer, director, or manager who is outside this state, the commissioner may conduct and enforce by all appropriate and available means any examination under oath in any other state or territory of the United States in which an officer,

director, or manager may then presently be, to the full extent permitted by the laws of another state or territory.

(3) If a witness fails to obey a subpoena to appear before the commissioner or the commissioner's designee or refuses to testify or answer any material question or to produce records, books, papers, contracts, or documents when required to do so, the commissioner or the commissioner's designee shall institute proceedings in the district court to compel obedience to the subpoena or other order or to punish the witness for neglect or refusal to obey the summons or other order.

~~(2)~~(4) Witness fees and mileage, if claimed, ~~shall~~ must be allowed the same as for testimony in a district court. Witness fees, mileage, and the actual expenses necessarily incurred in securing attendance of witnesses and their testimony ~~shall~~ must be itemized and ~~shall be~~ paid by the person being examined if ~~such~~ the person is found to have been in violation of the law as to the matter with respect to which ~~such~~ the witness was subpoenaed ~~or by the person, if other than the commissioner, at whose request the hearing is held~~.

~~(3) Subpoenas of witnesses shall be served in the same manner as if issued from a district court. If any individual fails to obey a subpoena lawfully served, the commissioner shall report such disobedience, together with a copy of the subpoena and proof of service thereof, to the district court for the county in which the individual was required to appear. Such court shall cause such individual to be produced and shall impose penalties as though he had disobeyed a subpoena issued out of such court.~~

~~(4) Any person knowingly failing to attend, answer, or produce records, documents, or other evidence requested by the commissioner or who knowingly fails to give the commissioner full and truthful information and answer in writing to any material written inquiry of the commissioner, relative to the subject of any such examination, investigation, or hearing, or knowingly fails to appear and testify under oath before the commissioner is guilty of a misdemeanor.~~

~~(5) Any person knowingly testifying falsely under oath as to any matter material to any such examination, investigation, or hearing is guilty of perjury, and upon conviction shall be punished according to 45-7-201.~~"

Section 18. Section 33-1-316, MCA, is amended to read:

"33-1-316. Testimony compelled -- immunity from prosecution. (1) A person may not be excused from attending and testifying or producing any evidence ~~upon~~ in any examination~~,~~ or investigation~~, or hearing~~ conducted by or under authority of the commissioner on the ground that the person's testimony or the evidence required may tend to incriminate or subject the person to a penalty or forfeiture. However, testimony or evidence compelled following a claim of privilege against self-incrimination or any information directly or indirectly derived

from compelled testimony or evidence may not be used against the person in a criminal prosecution.

(2) The commissioner may grant immunity from prosecution for or on account of any act, occurrence, transaction, matter, or other thing concerning which a person testifies if the commissioner determines that the ends of justice would be served by granting the additional immunity.

(3) Immunity does not extend to prosecution or punishment for false statements by the person that are contained in testimony or evidence given under this part."

Section 19. 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 ~~and his successors in office~~ 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 ~~shall~~ must be made on a form ~~as~~ designated and furnished by the commissioner. The appointment ~~shall be~~ is irrevocable, ~~shall bind~~ binds the insurer and any successor in interest or to the assets or liabilities of the insurer, and ~~shall remain~~ remains in effect as long as there is in force in Montana any contract made by the insurer or obligations arising ~~therefrom~~ from a contract.

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

Section 20. Section 33-1-701, MCA, is amended to read:

"33-1-701. Hearings -- discretion -- written demand -- ~~limitations on actions~~ procedure. (1) The commissioner may hold hearings for any purpose within the scope of this code considered necessary. Hearing procedures contained in Title 33, chapter 1, apply only to Title 33, except as otherwise provided.

~~(2) The commissioner shall hold a hearing if required by any provision or upon written demand by a person aggrieved by any act, threatened act, or failure to act or by any report, rule, or order by the commissioner, other than an order for holding a hearing, an order on a hearing, or an order pursuant to a hearing. The person's demand must specify the grounds relied upon as a basis for the relief sought at the hearing, and unless postponed by mutual consent, the hearing must be held within 30 days after receipt by the commissioner of the demand for a hearing.~~

~~(3) If within the 30-day period the commissioner does not either grant the hearing or issue an order~~

~~refusing to set the hearing, then the hearing must be considered to have been refused.~~

~~(4) Unless otherwise provided by law, the department shall commence an action for a violation of the insurance code within 2 years of the date of the violation or within 2 years after the department discovers the violation or through the use of reasonable diligence should have discovered the violation, whichever occurs last. Regardless of when the department discovers a violation or should have discovered a violation through the use of reasonable diligence, an action may not be commenced by the department unless it is brought within 5 years of the date of the violation.~~

(2) A person may provide the commissioner with a written demand for a hearing. A written demand must specify the grounds relied upon as a basis for the relief sought at the hearing. If the commissioner does not issue an order granting a person's request for a hearing within 30 days of receiving a request, the hearing is considered refused.

(3) All hearings must be conducted pursuant to the Montana Administrative Procedure Act, as provided in Title 2, chapter 4, part 6. Any supplemental hearing procedures may be adopted by administrative rule. The commissioner shall hold a hearing within 45 days of receipt of a request for a hearing unless postponed by mutual consent of the person requesting the hearing and the commissioner."

Section 21. Section 33-1-711, MCA, is amended to read:

"33-1-711. Appeals ~~from the commissioner~~ of commissioner's order -- stays -- exceptions. ~~(1) An appeal from the commissioner may be taken only from an order on hearing or with respect to a matter as to which the commissioner has refused a hearing. Any person who was a party to the hearing or whose pecuniary interests are directly and immediately affected by any order or refusal and who is aggrieved by an order or refusal may, within 30 days after the order has been mailed or delivered to the persons entitled to receive the same, the commissioner's order denying rehearing or reargument has been so mailed or delivered, or the commissioner's refusal to grant a hearing, appeal from the order on hearing or the refusal of a hearing. Any request for a stay of the commissioner's order must be made within 60 days, to run concurrently with the 30 days for appeal. The appeal must be taken to the district court of Lewis and Clark County by filing written notice of appeal in the court and by filing a copy of the notice with the commissioner, except that in appeals from the suspension or revocation of the certificate of authority of a domestic insurer or of the license of an insurance producer or surplus lines insurance producer, the person taking the appeal may at his option, in lieu of the district court of Lewis and Clark County, take the appeal to the district court of the county of Montana in which the insurer has its principal place~~

~~of business or the licensee resides.~~

~~(2) Upon filing of the notice of appeal, the court has full jurisdiction and shall determine whether the filing operates as a stay of the order or action appealed from.~~

~~(3) Within 20 days after filing of the copy of the notice of appeal in his office, the commissioner shall make and return to the court in which the appeal is pending a copy of his order appealed from and a full and complete transcript, duly certified by the commissioner, of his record of the hearing upon which the order was issued, together with all exhibits and documentary evidence introduced at the hearing. If the appeal is from an action of the commissioner with respect to which a hearing was refused, the commissioner shall, within the 20-day period, make and return to the court a full and complete transcript, duly certified by him, of all documents on file in his office directly relating to the matter as to which the appeal is taken.~~

~~(4) Upon receipt of the transcripts and evidence, the court shall hear the matter as soon as reasonably possible thereafter. Upon the hearing of the appeal, the court shall consider the evidence contained in the transcript, exhibits, and documents filed by the commissioner, together with additional proper evidence as may be offered by any party to the appeal.~~

~~(5) After hearing the appeal, the court may affirm, modify, or reverse the order or action of the commissioner, in whole or in part, or remand the action to the commissioner for further proceedings in accordance with the court's direction.~~

~~(6) Costs must be awarded as in civil actions.~~

~~(7) Appeal may be taken to the supreme court from the judgment of the district court as in other civil cases to which the state is a party. A stay of the effectiveness of any judgment may be made only by order of the supreme court upon the giving of security as that court considers proper.~~ (1) Except as provided in subsection (2), an appeal of the commissioner's order must be filed with the district court in Lewis and Clark County pursuant to the procedures provided for in Title 2, chapter 4, part 7.

(2) Appeals from the suspension or revocation of the certificate of authority of a domestic insurer or of the license of an insurance producer or surplus lines insurance producer may be filed in the district court of the county of Montana that the insurer or producer has its principal place of business or the licensee resides.

(3) Any request for a stay of the commissioner's order must be made within 30 days of filing an appeal in district court.

(4) Costs must be awarded as in civil actions.

~~(8)~~(5) This section does not apply to appeals ~~as to~~ for matters covered by Title 33, chapter 16."

Section 22. Section 33-2-307, MCA, is amended to read:

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

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

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

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

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

(B) ~~$7~~ $10 million. An insurer possessing less than ~~$7~~ $10 million capital and surplus may satisfy the requirements of this subsection upon an affirmative finding of acceptability by the commissioner. The commissioner's finding must be based upon ~~such~~ factors ~~as~~ of the quality of management, capital, and surplus of a parent company; company underwriting profit and investment income trends; and company record and reputation within the industry. The commissioner may not make an affirmative finding of acceptability when the surplus lines insurer's capital and surplus is less than $7 million.

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

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

(iv) in the case of an alien insurer, the insurer maintains in the United States an irrevocable trust fund in either a national bank or a member of the federal reserve system, in an amount not less than $1.5 million, for the protection of all its policyholders in the United States and the trust fund consists of cash, securities, or letters of

credit or of investments of substantially the same character and quality as those ~~which~~ that are eligible investments for the capital and statutory reserves of insurers authorized to write like kinds of insurance in this state. The trust fund, which must be included in any calculation of capital and surplus or its equivalent, must have an expiration date that may not at any time be less than 5 years. In addition, the alien insurer must appear on the national association of insurance commissioners' Non-Admitted Insurers Quarterly Listing.

(c) has provided the commissioner a copy of its current annual statement, certified by the insurer not more than 6 months after the close of the period reported upon, or quarterly if considered necessary by the commissioner, and ~~which~~ that is either:

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

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

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

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

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

(i) is in unsound financial condition;

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

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

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

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

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

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

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

Section 23. Section 33-2-313, MCA, is amended to read:

"33-2-313. Revocation or suspension of producer license. (1) The commissioner shall revoke or suspend any surplus lines insurance producer license, together with any license as an insurance producer:

(a) if the insurance producer fails to file an annual statement or to remit the tax as required by law;

(b) if the insurance producer fails to keep the records or to allow the commissioner to examine the records, as required by law;

(c) if the insurance producer falsifies the affidavit required by 33-2-310(3);

(d) if the insurance producer closes the surplus lines insurance producer office for a period of more than 30 business days, unless the commissioner grants permission otherwise;

(e) if the insurance producer violates any provision of this part; or

(f) for any of the causes for which an insurance producer's license may be revoked.

(2) The procedures provided by 33-17-1001 for the suspension, ~~or~~ revocation, or refusal to license or renew a license or for imposing a fine on an ~~of~~ insurance producer or applicant ~~licenses~~ apply to the suspension, ~~or~~ revocation, or refusal to license or renew a license or to imposing a fine on ~~of~~ a surplus lines insurance producer ~~license~~ or applicant.

(3) An insurance producer whose license has been revoked or suspended may not again be licensed within 1 year after revocation or suspension or until the insurance producer pays all penalties and delinquent taxes that are owed."

Section 24. Section 33-2-316, MCA, is amended to read:

"33-2-316. Rules. ~~(1)~~ The commissioner shall make reasonable rules, consistent with this part, for any of the following purposes:

~~(a)~~(1) effectuation of The Surplus Lines Insurance Law;

~~(b)~~(2) establishment of procedures through which determination is to be made as to the eligibility of particular proposed coverages for placement with a surplus lines insurer or insurers; and

~~(c)~~(3) establishment, procedures, and operations of the surplus lines advisory organization formed pursuant to 33-2-321 or others designed to assist a surplus lines insurance producer to comply with The Surplus

Lines Insurance Law.

~~(2) The rules adopted pursuant to subsection (1) are subject to the procedures and carry the penalty provided by 33-1-313.~~"

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

"33-2-708. 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.

(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 100.00

(B) annual renewal of license 10.00

(ii) surplus lines insurance producer license:

(A) application for original license and for issuance of license, if issued 50.00

(B) annual renewal of license 50.00

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

(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) 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~~,~~ and 33-2-705~~, and 33-2-706~~. 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 26. Section 33-2-1363, MCA, is amended to read:

"33-2-1363. Domiciliary liquidator's proposal to distribute assets. (1) Within 120 days of a final

determination of insolvency of an insurer by a court of competent jurisdiction of this state, the liquidator shall make application to the court for approval of a proposal to disburse assets out of marshalled assets, from time to time as ~~such~~ assets become available, to a guaranty association or foreign guaranty association having obligations because of ~~such~~ the insolvency. If the liquidator determines that there are insufficient assets to disburse, the application required by this section ~~shall~~ must be considered satisfied by a filing by the liquidator stating the reasons for this determination.

(2) The proposal ~~shall~~ must at least include provisions for:

(a) reserving amounts for the payment of expenses of administration and the payment of claims of secured creditors, to the extent of the value of the security held, and claims falling within the priorities established in 33-2-1371, ~~classes~~ class 1 ~~and 2~~;

(b) disbursement of the assets marshalled to date and subsequent disbursement of assets as they become available;

(c) equitable allocation of disbursements to each of the guaranty associations and foreign guaranty associations entitled ~~thereto~~ to a disbursement;

(d) the securing by the liquidator from each of the associations entitled to disbursements pursuant to this section of an agreement to return to the liquidator ~~such~~ assets, together with income earned on assets previously disbursed, as may be required to pay claims of secured creditors and claims falling within the priorities established in 33-2-1371 in accordance with ~~such~~ the priorities. ~~(no~~ A bond may not be required of ~~any such~~ the association~~); and~~.

(e) a full report to be made by each association to the liquidator accounting for all assets ~~so~~ disbursed to the association, all disbursements made ~~therefrom~~ from the assets, any interest earned by the association on ~~such~~ the assets, and any other matter ~~as~~ that the court may direct.

(3) The liquidator's proposal ~~shall~~ must provide for disbursements to the associations in amounts estimated at least equal to the claim payments made or to be made ~~thereby~~ by the associations for which ~~such~~ the associations could assert a claim against the liquidator and ~~shall further~~ must provide that if the assets available for disbursement from time to time do not equal or exceed the amount of ~~such~~ claim payments made or to be made by the association, then disbursements ~~shall~~ must be in the amount of available assets.

(4) The liquidator's proposal ~~shall~~ must, with respect to an insolvent insurer writing life or health insurance or annuities, provide for disbursements of assets to any guaranty association or any foreign guaranty association covering life or health insurance or annuities or to any other entity or organization reinsuring,

assuming, or guaranteeing policies or contracts of insurance under the acts creating ~~such~~ the associations.

(5) Notice of ~~such~~ the application ~~shall~~ must be given to the association in each of the states and to the commissioners of insurance of each of the states. Any notice ~~shall~~ must be considered to have been given when deposited in the United States certified ~~mails~~ mail, first-class postage prepaid, at least 30 days prior to submission of ~~such~~ the application to the court. Action on the application may be taken by the court ~~provided~~ if the ~~above~~ required notice has been given and ~~provided further that~~ if the liquidator's proposal complies with subsections (2)(a) and (2)(b)."

Section 27. Section 33-2-1371, MCA, is amended to read:

"33-2-1371. Priority of distribution. The priority of distribution of claims from the insurer's estate ~~shall be~~ is in accordance with the order in which each class of claims is ~~herein~~ set forth in this section. Every claim in each class ~~shall~~ must be paid in full or adequate funds retained for ~~such~~ the payment before the members of the next class receive any payment. ~~No subclasses shall~~ Subclasses may not be established within any class. The order of distribution of claims ~~shall be~~ is as follows:

(1) Class 1--the costs and expenses of administration, including but not limited to the following:

(a) the actual and necessary costs of preserving or recovering the assets of the insurer;

(b) compensation for all services rendered in the liquidation;

(c) any necessary filing fees;

(d) the fees and mileage payable to witnesses;

(e) reasonable ~~attorney's~~ attorney fees;

(f) the reasonable expenses of a guaranty association or foreign guaranty association in handling claims.

(2) Class 2~~--debts due to employees for services performed to the extent that they do not exceed $1,000 and represent payment for services performed within 1 year before the filing of the petition for liquidation. Officers and directors are not entitled to the benefit of this priority. Such priority is in lieu of any other similar priority which may be authorized by law as to wages or compensation of employees.~~

~~(3) Class 3--~~all claims under policies for losses incurred, including third-party claims, all claims against the insurer for liability for bodily injury or for injury to or destruction of tangible property ~~which~~ that are not under policies, and all claims of a guaranty association or foreign guaranty association for payment of covered claims or covered obligations of the insurer. All claims under life and health insurance and annuity policies, whether for death proceeds, health benefits, annuity proceeds, or investment values, ~~shall~~ must be treated as loss claims.

~~That~~ The portion of any loss, indemnification ~~for which~~ that is provided by other benefits, or advantages recovered by the claimant~~, shall~~ may not be included in this class, other than benefits or advantages recovered or recoverable in discharge of familial obligations of support or by way of succession at death or as proceeds of life insurance or as gratuities. ~~No~~ A payment by an employer to ~~his~~ an employee may not be treated as a gratuity.

(3) Class 3--claims of the federal government.

(4) Class 4--~~claims under nonassessable policies for unearned premium or other premium refunds and claims of general creditors.~~ debts due to employees for services performed to the extent that they do not exceed $1,000 and represent payment for services performed within 1 year before the filing of the complaint for liquidation. Officers and directors may not be entitled to the benefit of this priority. The priority must be in lieu of any other similar priority that may be authorized by law as to wages or compensation of employees.

(5) Class 5--claims of ~~the federal or any state or local government. Claims, including those of any governmental body for a penalty or forfeiture, shall be allowed in this class only to the extent of the pecuniary loss sustained from the act, transaction, or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs occasioned thereby. The remainder of such claims shall be postponed to the class of claims under subsection (8)~~ general creditors.

(6) Class 6--claims ~~filed late or any other claims other than claims under subsections (7) and (8)~~ of any state or local government. Claims, including those of any state or local government for a penalty or forfeiture, may be allowed in this class only to the extent of the pecuniary loss sustained from the act, transaction, or proceeding out of which the penalty or forfeiture arose, along with reasonable and actual costs. The remainder of the claims must be postponed to the class of claims under subsection (9).

(7) Class 7--~~surplus or contribution notes or similar obligations and premium refunds on assessable policies. Payments to members of domestic mutual insurance companies shall be limited in accordance with law~~ claims filed late or any other claims other than claims under subsections (8) and (9).

(8) Class 8--~~the claims of shareholders or other owners~~ surplus or contribution notes or similar obligations and premium refunds on assessable policies. Payments to members of domestic mutual insurance companies are limited in accordance with law.

(9) Class 9--the claims of shareholders or other owners."

Section 28. Section 33-2-1388, MCA, is amended to read:

"33-2-1388. Subordination of claims for noncooperation of ancillary receiver. If an ancillary receiver

in another state or foreign country, whether called by that name or not, fails to transfer to the domiciliary liquidator in this state any assets within ~~his~~ the ancillary receiver's control, other than special deposits, diminished only by the expenses of the ancillary receivership, if any, the claims filed in the ancillary receivership, other than special deposit claims or secured claims, ~~shall~~ must be placed in the class of claims under 33-2-1371~~(7)~~(8)."

Section 29. Section 33-3-203, MCA, is amended to read:

"33-3-203. Amendment of articles of incorporation -- grounds for disapproval. (1) A domestic stock insurer may amend its articles of incorporation for any lawful purpose by written authorization of the holders of a majority of the voting power of its outstanding capital stock or by affirmative vote of a majority voting at a lawful meeting of stockholders of which the notice given to stockholders included notice of the proposal to amend.

(2) A domestic mutual insurer may amend its articles of incorporation for any lawful purpose by affirmative vote of a majority of those of its members present or represented by proxy at a lawful meeting of its members of which the notice given members included notice of the proposal to amend.

(3) Upon adoption of an amendment, the insurer shall make in ~~quadruplicate~~ triplicate under its corporate seal a certificate ~~(~~, sometimes referred to as "articles of amendment"~~)~~, setting forth the amendment and the date and manner of the amendment's adoption. The certificate must be executed by the insurer's president or vice president and secretary or assistant secretary and acknowledged by them before an officer authorized by law to take acknowledgments of deeds. The insurer shall deliver to the commissioner the ~~quadruplicate~~ triplicate originals of the certificate. If the commissioner finds that the certificate and amendments comply with law, the commissioner shall approve in writing each of the ~~quadruplicate~~ triplicate originals and return them to the insurer. The insurer shall subsequently file one set of endorsed articles of amendment with the secretary of state, shall file one set with the commissioner, bearing the certification of the secretary of state, ~~and one set with the county clerk of the county in which the insurer's principal place of business will be located~~ and shall retain the remaining set in the corporate records. The amendment is effective when the filings have been completed.

(4) If the commissioner finds that the proposed amendment or certificate does not comply with the law, the commissioner may not approve the amendment or certificate and shall return the ~~quadruplicate~~ triplicate certificate of amendment to the insurer, together with a written statement of reasons for nonapproval. The filing fee is not returnable.

(5) If an amendment of articles of incorporation would reduce the authorized capital stock of a stock insurer below the amount then outstanding, the commissioner may not approve the amendment if the

commissioner has reason to believe that the interests of policyholders or creditors of the insurer would be materially prejudiced by the reduction. If a reduction of capital stock is ~~effectuated~~ realized, the insurer may require the return of the original certificates of stock held by each stockholder for exchange for new certificates for the number of shares as the stockholder is then entitled in the proportion that the reduced capital bears to the amount of capital stock outstanding as of immediately prior to the effective date of the reduction."

Section 30. Section 33-3-302, MCA, is amended to read:

"33-3-302. Bylaws of stock insurer -- modification. (1) ~~Any~~ A bylaw ~~so~~ adopted at any meeting of stockholders of a domestic insurer ~~shall~~ may not be modified or revoked except by the stockholders at a subsequent meeting unless the bylaws as adopted or amended by the stockholders grant authority to the board of directors to revoke or modify bylaw provisions~~;~~. ~~but the~~ The board of directors ~~shall~~ may not ~~so~~ revoke or modify any bylaw relating to the qualifications, election, terms, or compensation of directors or to the calling or notice of meetings of stockholders. ~~Any~~ A revocation or modification of bylaws made by the directors under this provision ~~shall~~ must be presented at the next following meeting of stockholders for the information of the stockholders.

(2) The insurer shall promptly file with the commissioner a copy, certified by the insurer's secretary, of its bylaws and amended bylaws. The commissioner may disapprove any bylaw provision considered by the commissioner to be unlawful. The insurer may not, after receiving written notice of the commissioner's disapproval, enact any disapproved bylaw provision."

Section 31. Section 33-3-303, MCA, is amended to read:

"33-3-303. Meetings of stockholders or members. (1) Except with the commissioner's consent, ~~Meetings~~ meetings of stockholders or members of a domestic insurer must be held in the city or town of its principal office or place of business in this state.

(2) A meeting of stockholders or members may not amend the insurer's articles of incorporation unless the proposal to amend was included in the notice of the meeting.

(3) Except with the commissioner's consent, each insurer shall, during the first 6 months of each calendar year, hold the annual meeting of its stockholders or members to fill vacancies existing or occurring in the board of directors, must receive and shall consider reports of the insurer's officers as to its affairs, and shall transact other business properly brought before it. Not less than 20 days' notice must be given of the meeting in

the manner provided in the bylaws, except when notice of the annual meeting of a mutual insurer is contained in its policies.

(4) Special meetings of the stockholders or members may be called at any time for any purpose by the board of directors upon not less than 10 days' notice, with notice given as provided in the bylaws. The notice must state the purpose of the meeting, and business for which notice was not given may not be transacted at the meeting.

(5) If more than 15 months ~~are allowed to elapse~~ elapse without an annual stockholders' or members' meeting being held, any stockholder or member may call for an annual meeting to be held. At any time, upon written request of any director or of any stockholders or members holding in the aggregate one-fifth of the voting power of all stockholders or members, it is the duty of the secretary to call a special meeting of stockholders or members to be held at the time that the secretary may fix, not less than 10 or more than 30 days after the receipt of the request. If the secretary fails to issue a call, the director, stockholders, or members making the request may do so.

(6) A stockholders' or members' meeting duly held may be organized for the transaction of business whenever a quorum is present. Except as otherwise provided by law or the articles of incorporation:

(a) the presence, in person or by proxy, of the holders of a majority of the voting power of all stockholders or of all members constitutes a quorum;

(b) the stockholders or members present at a duly organized meeting may continue to do business until adjournment, notwithstanding the withdrawal of enough stockholders or members to leave less than a quorum;

(c) if any necessary officer fails to attend a meeting, any stockholder or member present may be elected to act temporarily in lieu of the absent officer;

(d) if a meeting cannot be held because a quorum is not present, those present may adjourn the meeting to a time that they determine, but in the case of any meeting called for the election of any director, the adjournment must be to the next day and those who attend the second meeting, although less than a quorum as fixed in this section or in the articles of incorporation, constitute a quorum for the purpose of electing any director; and

(e) an annual or special meeting of stockholders or members may be adjourned to another date without new notice being given."

Section 32. Section 33-4-101, MCA, is amended to read:

"33-4-101. Scope of chapter -- provisions applicable. (1) The chapter applies to:

(a) all domestic mutual hail, fire, and other casualty insurers of farm property and stock and rural buildings formed and immediately prior to January 1, 1961, lawfully transacting insurance under sections 40-1501 through 40-1517 of the Revised Codes of Montana, 1947;

(b) all domestic mutual rural insurers formed and immediately prior to January 1, 1961, lawfully transacting insurance under sections 40-1601 through 40-1625 of the Revised Codes of Montana, 1947;

(c) all insurers formed under this chapter.

(2) The insurance laws of this state do not apply to or govern, either directly or indirectly, domestic farm mutual insurers except as provided in this chapter.

(3) The following chapters and sections of this title apply to farm mutual insurers to the extent applicable and not inconsistent with the express provisions of this chapter and the reasonable implications of the express provisions of this chapter: chapter 1, parts 1 through 4, 7, 12, and 13; 33-2-112; 33-2-501; 33-2-502; 33-2-532 through 33-2-535; 33-2-708; 33-2-1212; chapter 2, parts 13 and 16; 33-2-1501; 33-2-1517(2); 33-3-218; 33-3-308; 33-3-309; 33-3-401; 33-3-402; 33-3-431; 33-3-436; and chapter 18."

Section 33. Section 33-4-407, MCA, is amended to read:

"33-4-407. Profits or dividends. ~~No~~ An insurer ~~shall~~ may not accumulate any profits ~~as such~~ or pay any dividends. This provision ~~shall not be deemed to~~ does not prohibit an insurer from accumulating and maintaining surplus funds as required to be maintained by ~~it~~ the insurer under this chapter ~~or a safety fund as authorized under 33-4-405~~ or from accumulating and maintaining other voluntary reserves for ~~such~~ purposes and in ~~such~~ amounts ~~as~~ that may be reasonable. Limitations ~~upon~~ on any ~~such~~ accumulations and the purposes ~~thereof~~ of the accumulations may be provided for in the insurer's bylaws."

Section 34. Section 33-5-401, MCA, is amended to read:

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

(a) to transact property insurance, surplus funds of not less than ~~$400,000~~ $500,000;

(b) to transact casualty insurance:

(i) including authority for workers' compensation insurance, surplus funds of not less than ~~$600,000~~

$750,000; or

(ii) excluding authority for workers' compensation insurance, surplus funds of not less than ~~$400,000~~ $500,000.

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

(3) A domestic reciprocal insurer may be authorized to transact additional kinds of insurance if it has otherwise complied with the provisions of this code for the additional kinds of insurance and maintains surplus funds in an amount equal to the minimum capital stock required of a stock insurer for authority to transact a like combination of kinds of insurance."

Section 35. Section 33-10-102, MCA, is amended to read:

"33-10-102. Definitions. As used in this part, the following definitions apply:

(1) "Association" means the Montana insurance guaranty association created under 33-10-103.

(2) (a) "Covered claim" means an unpaid claim, including one for unearned premiums, that arises out of and is within the coverage and not in excess of the applicable limits of an insurance policy to which this part applies issued by an insurer, if the insurer becomes an insolvent insurer after July 1, 1971, and:

(i) the claimant or insured is a resident of this state at the time of the insured event; or

(ii) the property from which the claim arises is permanently located in this state.

(b) Covered claim does not include any amount:

(i) awarded as punitive or exemplary damages;

(ii) sought as a return of premium under a retrospective rating plan; or

(iii) due a reinsurer, insurer, insurance pool, or underwriting association as subrogation recoveries, reinsurance recoveries, contribution, or indemnification. ~~If insolvent, a~~ A reinsurer, insurer, insurance pool, or underwriting association may not assert a claim ~~in~~ for any amount against ~~an~~ the insured of the insolvent insurer other than ~~except~~ to the extent that the claim exceeds the policy limits of the ~~insured's~~ insolvent insurer's policy.

(3) "Insolvent insurer" means an insurer:

(a) authorized to transact insurance in this state either at the time the policy was issued or when the insured event occurred; and

(b) determined to be insolvent by a court of competent jurisdiction.

(4) "Member insurer" means a person who:

(a) writes any kind of insurance to which this part applies under 33-10-101(3), including the exchange of reciprocal or interinsurance contracts; and

(b) is licensed to transact insurance in this state.

(5) (a) "Net direct written premiums" means direct gross premiums written in this state on insurance policies to which this part applies, less return premiums on the policies and dividends paid or credited to policyholders of policies to which this part applies.

(b) Net direct written premiums does not include premiums on contracts between insurers or reinsurers.

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

Section 36. Section 33-12-103, MCA, is amended to read:

"33-12-103. General investment qualifications. (1) Insurers may acquire, hold, or invest in investments or engage in investment practices as set forth in this chapter. Investments not conforming to this chapter may not be admitted assets. Affiliate investments under ~~33-2-1113~~ 33-2-1103, other than those investments made by or on behalf of domestic insurers, are not subject to this provision.

(2) Subject to subsection (3), an insurer may not acquire or hold an investment as an admitted asset unless at the time of acquisition it is:

(a) (i) eligible for the payment or accrual of interest or discount, whether in cash or other securities;

(ii) eligible to receive dividends or other distributions; or

(iii) otherwise income-producing; or

(b) acquired under 33-12-207(3), 33-12-208, 33-12-210, 33-12-212, 33-12-307(3), 33-12-308, 33-12-310, or 33-12-311 or under the authority of sections of Montana law other than this chapter.

(3) An insurer may acquire or hold as admitted assets investments that do not otherwise qualify as provided in this chapter if the insurer has not acquired them for the purpose of circumventing any limitations contained in this chapter and if the insurer complies with the provisions of 33-12-105 and 33-12-108 and acquires the investments in the following circumstances:

(a) as payment on account of existing indebtedness or in connection with the refinancing, restructuring, or workout of existing indebtedness if taken to protect the insurer's interest in that investment;

(b) as realization on collateral for an obligation;

(c) in connection with an otherwise qualified investment or investment practice, as interest on or a

dividend or other distribution related to the investment or investment practice, or in connection with the refinancing of the investment, in each case for no additional or only nominal consideration;

(d) under a lawful and bona fide agreement of recapitalization or voluntary or involuntary reorganization in connection with an investment held by the insurer; or

(e) under a bulk reinsurance, merger, or consolidation transaction approved by the commissioner if the assets constitute admissible investments for the ceding, merged, or consolidated companies.

(4) An investment or portion of an investment acquired by an insurer under subsection (3) must become a nonadmitted asset 3 years, or 5 years in the case of mortgage loans and real estate, from the date of its acquisition, unless within that period the investment has become a qualified investment under a provision of this chapter other than subsection (3). However, an investment acquired under an agreement of bulk reinsurance, merger, or consolidation may be qualified for a longer period if provided for in the plan for reinsurance, merger, or consolidation as approved by the commissioner. Upon application by the insurer and a showing that the nonadmission of an asset held under subsection (3) would materially injure the interests of the insurer, the commissioner may extend the period for admissibility for an additional reasonable period of time.

(5) Except as provided in subsections (6) and (8), an investment must qualify under this chapter if, on the date the insurer committed to acquire the investment or on the date of its acquisition, it would have qualified under this chapter. For the purposes of determining limitations contained in this chapter, an insurer shall give appropriate recognition to any commitments to acquire investments.

(6) (a) An investment held as an admitted asset by an insurer on July 1, 1999, that qualified under former law remains qualified as an admitted asset under this chapter.

(b) Each specific transaction constituting an investment practice of the type described in this chapter that was lawfully entered into by an insurer and was in effect on July 1, 1999, continues to be permitted under this chapter until its expiration or termination under its terms.

(7) Unless otherwise specified, an investment limitation computed on the basis of an insurer's admitted assets or capital and surplus relates to the amount required to be shown on the most recent statutory balance sheet of the insurer required to be filed with the commissioner. For purposes of computing any limitation based upon admitted assets, the insurer shall deduct from the amount of its admitted assets the amount of the liability recorded on its statutory balance sheet for:

(a) the return of acceptable collateral received in a reverse repurchase transaction or a securities lending transaction;

(b) cash received in a dollar roll transaction; and

(c) the amount reported as borrowed money in the most recently filed financial statement to the extent not included in subsections (7)(a) and (7)(b).

(8) An investment qualified, in whole or in part, for acquisition or holding as an admitted asset may be qualified or requalified at the time of acquisition or a later date, in whole or in part, under any other section if the relevant conditions contained in the other section are satisfied at the time of qualification or requalification.

(9) An insurer shall maintain documentation demonstrating that investments were acquired in accordance with this chapter.

(10) An insurer may not enter into an agreement to purchase securities in advance of their issuance for resale to the public as part of a distribution of the securities by the issuer or otherwise guarantee the distribution, except that an insurer may acquire privately placed securities with registration rights.

(11) Notwithstanding the provisions of this chapter, the commissioner, for good cause, may under the Montana Administrative Procedure Act order an insurer to nonadmit, limit, dispose of, withdraw from, or discontinue an investment or investment practice. The authority of the commissioner under this subsection is in addition to any other authority of the commissioner.

(12) Insurance futures and insurance futures options are not considered investments or investment practices for purposes of this chapter."

Section 37. Section 33-12-202, MCA, is amended to read:

"33-12-202. General ~~three~~ five percent diversification -- medium-grade and lower-grade investments -- Canadian investments. (1) (a) Except as otherwise specified in this chapter, an insurer may not acquire, directly or indirectly through an investment subsidiary, an investment under this chapter if, as a result of and after giving effect to the investment, the insurer would hold more than ~~3%~~ 5% of its admitted assets in investments of all kinds issued, assumed, accepted, insured, or guaranteed by a single person.

(b) The ~~3%~~ 5% limitation does not apply to the aggregate amounts insured by a single financial guaranty insurer with the highest generic rating issued by a nationally recognized statistical rating organization.

(c) Asset-backed securities are subject to the limitations of subsection (1)(a). However, an insurer may not acquire an asset-backed security if, as a result of and after giving effect to the investment, the aggregate amount of asset-backed securities secured by or evidencing an interest in a single asset or single pool of assets held by a trust or other business entity then held by the insurer would exceed ~~3%~~ 5% of its admitted assets.

(2) (a) An insurer may not acquire, directly or indirectly through an investment subsidiary, an investment under 33-12-203, 33-12-206, or 33-12-209 or counterparty exposure under 33-12-210(4) if, as a result of and after giving effect to the investment:

(i) the aggregate amount of medium-grade and lower-grade investments then held by the insurer would exceed 20% of its admitted assets;

(ii) the aggregate amount of lower-grade investments then held by the insurer would exceed 10% of its admitted assets;

(iii) the aggregate amount of investments rated 5 or 6 by the SVO then held by the insurer would exceed 3% of its admitted assets;

(iv) the aggregate amount of investments rated 6 by the SVO then held by the insurer would exceed 1% of its admitted assets; or

(v) the aggregate amount of medium-grade and lower-grade investments then held by the insurer that receive as cash income less than the equivalent yield for treasury issues with a comparative average life would exceed 1% of its admitted assets.

(b) An insurer may not acquire, directly or indirectly through an investment subsidiary, an investment under 33-12-203, 33-12-206, or 33-12-209 or counterparty exposure under 33-12-210(4) if, as a result of and after giving effect to the investment:

(i) the aggregate amount of medium-grade and lower-grade investments issued, assumed, guaranteed, accepted, or insured by any one person or, as to asset-backed securities secured by or evidencing an interest in a single asset or pool of assets, then held by the insurer would exceed 1% of its admitted assets; or

(ii) the aggregate amount of lower-grade investments issued, assumed, guaranteed, accepted, or insured by any one person or, as to asset-backed securities secured by or evidencing an interest in a single asset or pool of assets, then held by the insurer would exceed 0.5% of its admitted assets.

(c) If an insurer attains or exceeds the limit of any one rating category referred to in this subsection (2), the insurer is precluded from acquiring investments in other rating categories subject to the specific and multicategory limits applicable to those investments.

(3) (a) An insurer may not acquire, directly or indirectly through an investment subsidiary, a Canadian investment authorized by this chapter if, as a result of and after giving effect to the investment, the aggregate amount of these investments then held by the insurer would exceed 40% of its admitted assets or if the aggregate amount of Canadian investments not acquired under 33-12-203(3) then held by the insurer would exceed 25%

of its admitted assets.

(b) However, as to an insurer that is authorized to do business in Canada or that has outstanding insurance, annuity, or reinsurance contracts on lives or risks resident or located in Canada and denominated in Canadian currency, the limitations of subsection (3)(a) must be increased by the greater of:

(i) the amount the insurer is required by Canadian law to invest in Canada or to be denominated in Canadian currency; or

(ii) 115% of the amount of the insurer's reserves and other obligations under contracts on lives or risks resident or located in Canada."

Section 38. Section 33-12-203, MCA, is amended to read:

"33-12-203. Rated credit instruments. (1) Subject to the limitations of subsection (7), an insurer may acquire rated credit instruments in accordance with this section.

(2) Subject to the limitations of 33-12-202(2), an insurer may acquire rated credit instruments issued, assumed, guaranteed, or insured by:

(a) the United States; or

(b) a government-sponsored enterprise of the United States, if the instruments of the government sponsored enterprise are assumed, guaranteed, or insured by the United States or are otherwise backed or supported by the full faith and credit of the United States.

(3) (a) Subject to the limitations of 33-12-202(2), an insurer may acquire rated credit instruments issued, assumed, guaranteed, or insured by:

(i) Canada; or

(ii) a government-sponsored enterprise of Canada, if the instruments of the government sponsored enterprise are assumed, guaranteed, or insured by Canada or are otherwise backed or supported by the full faith and credit of Canada.

(b) An insurer may not acquire an instrument under this subsection (3) if, as a result of and after giving effect to the investment, the aggregate amount of investments then held by the insurer under this subsection (3) would exceed 40% of its admitted assets.

(4) (a) Subject to the limitations of 33-12-202(2), an insurer may acquire rated credit instruments, excluding asset-backed securities:

(i) issued by a government money market mutual fund, a class one money market mutual fund, or a class

one bond mutual fund;

(ii) issued, assumed, guaranteed, or insured by a government sponsored enterprise of the United States other than those eligible under subsection (2);

(iii) issued, assumed, guaranteed, or insured by a state, if the instruments are general obligations of the state; or

(iv) issued by a multilateral development bank.

(b) However, an insurer may not acquire an instrument of any one fund, enterprise, entity, or state under this subsection (4) if, as a result of and after giving effect to the investment, the aggregate amount of investments then held in any one fund, enterprise, entity, or state under this subsection (4) would exceed 10% of its admitted assets.

(5) Subject to the limitations of 33-12-202, an insurer may acquire preferred stocks that are not foreign investments and that meet the requirements of rated credit instruments if, as a result of and after giving effect to the investment:

(a) the aggregate amount of preferred stocks then held by the insurer under this subsection (5) does not exceed 20% of its admitted assets; and

(b) the aggregate amount of preferred stocks then held by the insurer under this subsection (5) that are not sinking fund stocks or rated P-1 or P-2 by the SVO does not exceed 10% of its admitted assets.

(6) Subject to the limitations of 33-12-202, in addition to those investments eligible under subsections (2) through (5) of this section, an insurer may acquire rated credit instruments that are not foreign investments.

(7) An insurer may not acquire special rated credit instruments under this section if, as a result of and after giving effect to the investment, the aggregate amount of special rated credit instruments then held by the insurer would exceed 5% of its admitted assets.

(8) The provisions of subsections (2) through (4) are not subject to the limitation provided in 33-12-202(1)."

Section 39. Section 33-12-212, MCA, is amended to read:

"33-12-212. Additional investment authority. (1) Under this subsection (1), an insurer may acquire an investment or may engage in investment practices described in 33-12-208 solely for the purpose of acquiring investments that exceed the quantitative limitations of 33-12-202 through 33-12-209. However, an insurer may not acquire an investment or engage in investment practices described in 33-12-208 under this subsection (1)

if, as a result of and after giving effect to the transaction:

(a) the aggregate amount of investments then held by an insurer under this subsection (1) would exceed ~~3%~~ 5% of its admitted assets; or

(b) the aggregate amount of investments as to a limitation in 33-12-202 through 33-12-209 then held by the insurer under this subsection (1) would exceed 1% of its admitted assets.

(2) (a) In addition to the authority provided under subsection (1), an insurer may acquire under this subsection (2) an investment of any kind or engage in investment practices described in 33-12-208 that are not specifically prohibited by this chapter without regard to the categories, conditions, standards, or other limitations of 33-12-202 through 33-12-209 if, as a result of and after giving effect to the transaction, the aggregate amount of investments then held under this subsection (2) would not exceed the lesser of:

(i) 10% of its admitted assets; or

(ii) 75% of its capital and surplus.

(b) However, an insurer may not acquire any investment or engage in any investment practice under this subsection (2) if, as a result of and after giving effect to the transaction, the aggregate amount of all investments in any one person then held by the insurer under this subsection (2) would exceed ~~3%~~ 5% of its admitted assets.

(3) In addition to the investments acquired under subsections (1) and (2), an insurer may acquire under this subsection (3) an investment of any kind or engage in investment practices described in 33-12-208 that are not specifically prohibited by this chapter without regard to any limitations of 33-12-202 through 33-12-209 if:

(a) the commissioner grants prior approval;

(b) the insurer demonstrates that its investments are being made in a prudent manner and that the additional amounts will be invested in a prudent manner; and

(c) as a result of and after giving effect to the transaction, the aggregate amount of investments then held by the insurer under this subsection (3) does not exceed the greater of:

(i) 25% of its capital and surplus; or

(ii) 100% of capital and surplus less 10% of its admitted assets.

(4) An investment prohibited under 33-12-105 that is not permitted under 33-12-210 or additional derivative instruments acquired under 33-12-210 may not be acquired under this section."

Section 40. Section 33-14-202, MCA, is amended to read:

"33-14-202. ~~Investigation of applicant --~~ Applicant qualifications -- hearing. (1) Upon the filing of

an application and the payment of the license fee, the commissioner ~~shall~~ may make ~~an investigation~~ a background examination of each applicant and shall issue a premium finance company license if the applicant is qualified in accordance with this chapter. ~~If the commissioner does not so find, he shall within 30 days after he has received the application, at the request of the applicant, give the applicant a full hearing~~ If the commissioner denies the application, the applicant may file a written demand for a hearing pursuant to the provisions of 33-1-701.

(2) The commissioner shall issue or renew a license ~~as may be applied for~~ when ~~he~~ the commissioner is satisfied that the person to be licensed:

(a) is competent and trustworthy and intends to act in good faith in the capacity involved by the license applied for;

(b) has a good business reputation and has had experience, training, or education ~~so as to be qualified~~ that qualifies the applicant in the business for which the license is applied; and

(c) if a corporation, is a corporation incorporated under the laws of the state or is a foreign corporation authorized to transact business in the state."

Section 41. Section 33-15-414, MCA, is amended to read:

"33-15-414. Assignment. (1) A policy or group certificate issued ~~thereunder~~ under a policy may be assignable or not assignable, as provided by its terms.

(2) Subject to its terms relating to the assignability, any life or disability policy or group certificate under either, ~~whether heretofore or hereafter issued,~~ under the terms of which the beneficiary may be changed upon the sole request of the insured or owner, may be assigned either by pledge or by transfer of title, by an assignment executed by the insured or owner, alone and delivered to the insurer, whether or not the pledgee or assignee is the insurer.

(3) An assignment valid ~~hereunder~~ under this section may transfer to the assignee all the rights, privileges, and incidents of ownership of the assignor in the policy or group certificate, including but not limited to the rights to designate beneficiaries and of a group certificate holder to have an individual policy issued in accordance with 33-20-1209 and 33-20-1210. Any ~~such~~ assignment ~~shall entitle~~ entitles the insurer to deal with the assignee as the owner or pledgee of the policy in accordance with the terms of the assignment until the insurer has received at its home office written notice of termination of the assignment or pledge or written notice by or on behalf of some other person claiming some interest in the policy in conflict with the assignment~~;~~.

~~provided, however~~ However, ~~that~~ the insurer ~~shall~~ may not be prejudiced by any payment made or action taken inconsistent with the terms of any assignment before the insurer has received and had reasonable time to act on written notice of ~~such~~ the assignment.

(4) This section acknowledges, declares, and codifies the existing right of assignment of interests under insurance policies. An assignment otherwise valid ~~shall~~ is not ~~be~~ invalid because it was made prior to July 1, 1971.

(5) An insurance producer may not have an ownership interest in any policy, by assignment or otherwise, unless the insurance producer has an insurable interest, as defined in 33-15-201, in the life of the insured, except with permission of the commissioner."

Section 42. Section 33-16-102, MCA, is amended to read:

"33-16-102. Definitions. In this chapter, the following definitions apply:

(1) "Advisory organization" means each person, other than an admitted insurer, whether located within or outside this state, who prepares policy forms or makes underwriting rules incident to but not including the making of rates, rating plans, or rating systems or who collects and furnishes to admitted insurers or rating organizations loss or expense statistics or other statistical information and data and acts in an advisory, as distinguished from a ratemaking, capacity. A licensed attorney, acting in the usual course of the profession, may not be considered an advisory organization.

(2) "Dividend" means:

(a) a noncontractual and nonrecoverable payment or credit declared by an insurer's board of directors and paid out or credited out of earned surplus to policyholders, members, or subscribers; or

(b) in the absence of earned surplus, a noncontractual and nonrecoverable payment or credit declared by an insurer's board of directors and paid to policyholders, members, or subscribers with the written permission of the commissioner. The commissioner may grant permission only if the payment of the dividend or credit will not reduce the insurer's capital and surplus below an amount three times the minimum capital required under 33-2-109.

(3) "Member" means an insurer who participates in or is entitled to participate in the management of a rating, advisory, or other organization.

(4) "Rating organization" means each person, other than an admitted insurer, whether located within or outside this state, with the object or purpose of making rates, rating plans, or rating systems. Two or more

admitted insurers who act in concert for the purpose of making rates, rating plans, or rating systems and who do not operate within the specific authorizations contained in 33-16-105, 33-16-302, 33-16-304, 33-16-305, and 33-16-307 must be considered a rating organization. A single insurer may not be considered a rating organization.

(5) "Subscriber" means an insurer who is furnished at its request with rates and rating manuals by a rating organization of which the insurer is not a member or with advisory services by an advisory organization of which it is not a member.

(6) "Willful" or "willfully", in relation to an act or omission that constitutes a violation of this chapter, means with actual knowledge or belief that the act or omission constitutes a violation and with specific intent to commit the violation."

Section 43. Section 33-16-403, MCA, is amended to read:

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

(2) The commissioner shall issue the license applied for within 60 days of its filing if, from the examination and investigation, the commissioner is satisfied that:

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

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

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

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

(4) The commissioner may grant an application in part only and issue a license to act as a rating, advisory, or workers' compensation advisory organization for one or more of the classes of insurance or subdivisions ~~thereof~~ of the classes of insurance or class of risk, or a part or combination ~~thereof~~ of a class of risk as are specified in the application, if the applicant qualifies for only a portion of the classes applied for.

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

general fund.

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

Section 44. Section 33-17-502, MCA, is amended to read:

"33-17-502. Prohibition on holding out as consultant -- receiving fee. (1) A person not licensed as an insurance consultant in this state who identifies or ~~holds himself out to be~~ represents to the public that the person is an insurance consultant without having been licensed as an insurance consultant under this part or a person who uses any other designation or title that is likely to mislead the public and ~~holds himself out in any manner as having~~ represents to the public that the person has particular insurance qualifications other than those for which ~~he~~ the person may be otherwise licensed or otherwise qualified is guilty of a misdemeanor and upon conviction shall be fined $1,500.

(2) A person not licensed as an insurance consultant with respect to the relevant kinds of insurance who receives a fee for examining, appraising, reviewing, or evaluating any insurance policy, annuity or pension contract, plan, or program or who makes recommendations or gives advice with regard to any ~~of the above~~ insurance policy, annuity or pension contract, plan, or program without first having been licensed by the commissioner as an insurance consultant is guilty of a misdemeanor and upon conviction shall be fined $1,500.

(3) ~~Nothing in this~~ This part ~~applies~~ does not apply to:

(a) licensed attorneys at law in this state acting in their professional capacity; or

(b) an actuary or a certified public accountant who provides information, recommendations, advice, or services in ~~his~~ a professional capacity if neither ~~he~~ the actuary nor the certified public accountant ~~nor~~ or ~~his~~ the actuary's or certified public accountant's employer receives any compensation directly or indirectly on account of any insurance, bond, annuity or pension contract that results in whole or part from that information, recommendation, advice, or services."

Section 45. Section 33-17-1001, MCA, is amended to read:

"33-17-1001. Suspension, revocation, or refusal of license. (1) ~~Except as provided in 33-17-411, after a hearing, which must be held no less than 10 days after advance notice by certified mail, on charges given under 33-1-314(3), the commissioner may suspend for up to 5 years, revoke, refuse to continue, or deny a license issued under this chapter if the commissioner finds that the licensee or applicant has:~~ The commissioner may suspend, revoke, refuse to renew, or refuse to issue an insurance producer's license or may levy a civil penalty

in accordance with 33-1-317, or choose any combination of actions, when an insurance producer or applicant for an insurance producer's license 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;

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

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

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

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

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

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

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

(2) The license of a partnership or corporation 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 may suspend, revoke, or refuse to continue a license under subsection (1)(e) without conducting an investigation pursuant to 37-1-203 or making a written finding pursuant to 37-1-204."

Section 46. Section 33-17-1103, MCA, is amended to read:

"33-17-1103. Accepting and paying commissions, fees, or consideration -- restriction. (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 ~~he~~ 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 ~~his~~ the insurance producer's commissions or other compensation received or to be received by ~~him~~ the insurance producer on account of a transaction under ~~his~~ 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~~, except as provided in 33-17-1113~~. This provision does not affect payment of the regular salaries due 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, or use of funds for family or personal purposes.

(3) This section does not apply to those transactions with surplus lines insurance producers that are lawful under 33-2-306."

Section 47. 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 association of life underwriters~~ national association of insurance and financial advisors-Montana, one representative of the professional insurance agents of Montana, 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 48. Section 33-19-406, MCA, is amended to read:

"33-19-406. Judicial review of orders and reports. ~~Any~~ A person subject to an order of the commissioner ~~under 33-1-706 or 33-19-405~~ or ~~any~~ a person whose rights under this chapter were allegedly violated may obtain a review of any order or report of the commissioner as provided by 33-1-711."

Section 49. Section 33-20-1201, MCA, is amended to read:

"33-20-1201. Provisions required in group contracts. A policy of group life insurance or a certificate may not be delivered in this state unless it contains in substance the provisions set forth in this part or provisions that in the opinion of the commissioner are more favorable to the persons insured or at least as favorable to the persons insured and more favorable to the policyholder~~, however~~. A provision may be omitted from a certificate if the commissioner has determined that the provision is not appropriate in a certificate. However:

(1) 33-20-1207 through 33-20-1211 do not apply to policies issued to a creditor to insure debtors of the creditor;

(2) the standard provisions required for individual life insurance policies do not apply to group life insurance policies; and

(3) if the group life insurance policy is on a plan of insurance other than the term plan, it must contain a nonforfeiture provision or provisions that in the opinion of the commissioner is or are equitable to the insured persons and to the policyholder~~;~~. ~~but nothing in~~ However, this subsection may not be construed to require that

group life insurance policies contain the same nonforfeiture provisions as are required for individual life insurance policies."

Section 50. Section 33-20-1209, MCA, is amended to read:

"33-20-1209. Conversion on termination of eligibility. (1) The group life insurance policy or certificate ~~shall~~ must contain a provision that if the insurance or any portion of it on a person covered under the policy ceases because of termination of employment or of membership in the class or classes eligible for coverage under the policy, ~~such~~ the person ~~shall be~~ is entitled to have issued to ~~him~~ the person by the insurer, without evidence of insurability, an individual policy of life insurance~~, provided~~ if the application for the individual policy ~~shall be~~ is made and the first premium is paid to the insurer within 31 days after ~~such~~ termination~~,~~ and provided ~~further~~ that:

(a) the individual policy ~~shall~~ must, at the option of ~~such~~ the person, be on any one of the forms, including but not limited to term insurance, if the group policy ~~so~~ provides for term insurance, then customarily issued by the insurer at the age and for the amount applied for, and ~~shall offer~~ must offer benefits at least equal to those under the group coverage;

(b) the individual policy ~~shall~~ must, at the option of the insured, be in an amount not in excess of the amount of life insurance ~~which~~ that ceases because of ~~such~~ the termination, less the amount of any life insurance for which ~~such~~ the person is insured under any other group policy within 31 days after ~~such~~ the termination, provided that any amount of insurance ~~which shall have~~ that has matured on or before the date of ~~such~~ the termination as an endowment payable to the person insured, whether in one sum or in installments or in the form of an annuity, ~~shall~~ may not, for the purposes of this provision, be included in the amount ~~which~~ that is considered to cease because of ~~such~~ the termination; and

(c) the premium on the individual policy ~~shall be at~~ is the insurer's then customary rate applicable to the form and amount of the individual policy, to the class of risk ~~to which such~~ that the person ~~then~~ belongs, and to ~~his~~ the person's age attained on the effective date of the individual policy.

(2) With the consent of the employer, a person covered under a group life insurance policy issued to an employer or to the trustees of a fund established by an employer under 33-20-1101 may continue ~~his~~ the person's coverage under the group policy during ~~his~~ the person's employment notwithstanding a reduction of ~~his~~ the person's regular work schedule to less than the minimum number of hours required for eligibility for membership. The premium charged for the continued coverage ~~shall~~ must be equal to that charged other members of the

group. ~~Such~~ The person's coverage under the group will cease if ~~he~~ the person subsequently becomes eligible for coverage under another group policy because of employment elsewhere."

Section 51. Section 33-20-1210, MCA, is amended to read:

"33-20-1210. Conversion on termination of policy. The group life insurance policy or certificate ~~shall~~ must contain a provision that if the group policy or certificate terminates or is amended ~~so as~~ to terminate the insurance of any class of insured persons, every person insured ~~thereunder~~ under the group policy or certificate at the date of ~~such~~ the termination whose insurance terminates and who has been ~~so~~ insured for at least 3 years prior to ~~such~~ the termination date ~~shall be~~ is entitled to have issued to ~~him~~ the person by the insurer an individual policy of life insurance, subject to the same conditions and limitations ~~as~~ that are provided by 33-20-1209, except that the group policy or certificate may provide that the amount of ~~such~~ the individual policy may not exceed the smaller of:

(1) the amount of the person's life insurance protection ceasing because of the termination or amendment of the group policy or certificate, less the amount of any life insurance for which ~~he~~ the person is or becomes eligible under any group policy issued or reinstated by the same or another insurer within 31 days after ~~such~~ the termination; or

(2) $10,000."

Section 52. Section 33-20-1211, MCA, is amended to read:

"33-20-1211. Death pending conversion. The group life insurance policy or certificate ~~shall~~ must contain a provision that if a person insured under the policy or certificate dies during the period ~~within which he~~ that the person would have been entitled to have an individual policy issued to ~~him~~ the person in accordance with 33-20-1209 or 33-20-1210 and before ~~such~~ an individual policy ~~shall have become~~ becomes effective, the amount of life insurance ~~which he~~ that the person would have been entitled to have issued to ~~him~~ the person under ~~such~~ an individual policy ~~shall be~~ is payable as a claim under the group policy or certificate, whether or not application for the individual policy or the payment of the first premium ~~therefor~~ has been made."

Section 53. Section 33-20-1212, MCA, is amended to read:

"33-20-1212. Notice as to conversion right. If ~~any~~ an individual insured under a group life insurance policy or certificate ~~hereafter~~ delivered in this state becomes entitled under the terms of ~~such~~ the policy or

certificate to have an individual policy of life insurance issued to ~~him~~ the individual without evidence of insurability, subject to making ~~of~~ an application and payment of the first premium within the period specified in ~~such~~ the policy and if ~~such~~ an individual is not given notice of the existence of ~~such~~ the right at least 15 days prior to the expiration date of ~~such~~ the period, then ~~in such event~~ the individual ~~shall~~ must have an additional period ~~within which~~ to exercise ~~such~~ the right, but ~~nothing herein contained~~ this section ~~shall~~ may not be construed to continue any insurance beyond the period provided in ~~such~~ the policy. ~~This~~ The additional period ~~shall expire~~ expires 15 days ~~next~~ after the individual is given ~~such~~ the notice, but ~~in no event shall such~~ an additional period may not extend beyond 60 days ~~next~~ after the expiration date of the period provided in ~~such~~ the policy. Written notice presented to the individual or mailed by the policyholder to the ~~last known~~ last-known address of the individual or mailed by the insurer to the ~~last known~~ last-known address of the individual as furnished by the policyholder ~~shall constitute~~ constitutes notice for the purpose of this section."

Section 54. Section 33-22-508, MCA, is amended to read:

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

(2) A group insurer may meet the requirements of this section by contracting with another insurer to issue conversion policies as described in subsections (5) and (6). The conversion carrier must be authorized to act as an insurer in this state, and the commissioner shall approve the conversion policies pursuant to 33-1-501.

~~(2)~~(3) The individual policy or group policy, at the option of the insured, may be on any form then customarily issued by the insurer to individual or group policyholders, with the exception of a policy the eligibility for which is determined by affiliation other than by employment with a common entity. In addition, the insurer or conversion carrier shall make available a conversion policy as required by subsection ~~(4)~~ (6).

~~(3)~~(4) The premium ~~on~~ for the individual policy or group policy must be at no more than 200% of the insurer's ~~then~~ customary rate applicable to the ~~coverage of the individual or~~ group policy being terminated at the time of the conversion. If the person entitled to conversion under this section has been insured for more than 3 years, the premium may not be more than 150% of the customary rate of the policy being terminated at the time of the conversion. The customary rate is that rate that is normally issued for medically underwritten policies without discount for healthy lifestyles.

(5) A conversion carrier shall offer an individual or group conversion policy that provides the same schedule of benefits and covers the same eligible expenses as those being terminated. The premium for the policy must be calculated as described in subsection (4).

~~(4)~~(6) The insurer or conversion carrier shall also make available a conversion policy, certificate, or membership contract that provides at least the level of benefits provided by the insurer's lowest cost basic health benefit plan, as defined in 33-22-1803. If the insurer is not a small employer carrier under part 18, the insurer shall make available a conversion policy, certificate, or membership contract that provides equivalent benefits to a basic health benefit plan. The conversion rate may not exceed 150% of the highest rate charged for that plan.

(7) The effective date and time of the conversion policy must be established to ensure that there is no break in coverage between the termination of the group policy coverage and the inception of the conversion policy."

Section 55. Section 33-22-701, MCA, is amended to read:

"33-22-701. Scope of part -- purpose -- exception. Except as provided in 33-22-706, the provisions of this part apply to all group policies and certificates of accident and health insurance and group subscriber contracts for the care and treatment of mental illness, alcoholism, and drug addiction offered to Montana residents by insurers, health service corporations, and all employees' health and welfare funds that provide accident and health insurance benefits to residents of this state. It is the purpose of this part to preserve the rights of the consumer to have this coverage according to the consumer's medical and economic needs."

Section 56. Section 33-22-702, MCA, is amended to read:

"33-22-702. Definitions. For purposes of this part, the following definitions apply:

(1) "Chemical dependency treatment center" means a treatment facility that:

(a) provides a program for the treatment of alcoholism or drug addiction pursuant to a written treatment plan approved and monitored by a physician or chemical dependency counselor certified by the state; ~~and~~ and

(b) is licensed or approved as a treatment center by the department of public health and human services under 53-24-208~~.~~ or is licensed or approved by the state where the facility is located.

(2) "Inpatient benefits" are as set forth in 33-22-705.

(3) "Mental health treatment center" means a treatment facility organized to provide care and treatment for mental illness through multiple modalities or techniques pursuant to a written treatment plan approved and monitored by an interdisciplinary team, including a licensed physician, psychiatric social worker, and psychologist, and a treatment facility that is:

(a) licensed as a mental health treatment center by the state;

(b) funded or eligible for funding under federal or state law; or

(c) affiliated with a hospital under a contractual agreement with an established system for patient referral.

(4) (a) "Mental illness" means a clinically significant behavioral or psychological syndrome or pattern that occurs in a person and that is associated with:

(i) present distress or a painful symptom;

(ii) a disability or impairment in one or more areas of functioning; or

(iii) a significantly increased risk of suffering death, pain, disability, or an important loss of freedom.

(b) Mental illness must be considered as a manifestation of a behavioral, psychological, or biological dysfunction in a person.

(c) Mental illness does not include:

(i) a developmental disorder;

(ii) a speech disorder;

(iii) a psychoactive substance use disorder;

(iv) an eating disorder, except for bulimia and anorexia nervosa;

(v) an impulse control disorder, except for intermittent explosive disorder and trichotillomania; or

(vi) a severe mental illness as provided in 33-22-706.

(5) "Outpatient benefits" are as set forth in 33-22-705."

Section 57. Section 33-22-703, MCA, is amended to read:

"33-22-703. (Temporary) Coverage for mental illness, alcoholism, and drug addiction. (1) A group health plan or a health insurance issuer that provides group health insurance coverage shall provide for Montana residents covered by the plan at least the following level of benefits for the necessary care and treatment of mental illness, alcoholism, and drug addiction:

(a) under basic inpatient expense policies or contracts, inpatient hospital benefits and outpatient benefits consisting of durational limits, dollar limits, deductibles, and coinsurance factors that are not less favorable than for physical illness generally, except that:

(i) inpatient treatment for mental illness is subject to a maximum yearly benefit of 21 days;

(ii) inpatient treatment for mental illness may be traded on a 2-for-1 basis for a benefit for partial hospitalization through a program that complies with the standards for a partial hospitalization program that are published by the American association for partial hospitalization if the program is operated by a hospital;

(iii) inpatient and outpatient treatment for alcoholism and drug addiction, excluding costs for medical detoxification, is subject to a maximum benefit of $6,000 for a 12-month period until a lifetime maximum inpatient benefit of $12,000 is met, after which the annual benefit may be reduced to $2,000; and

(iv) costs for medical detoxification treatment must be paid the same as any other sickness or illness under the terms of the contract and are not subject to the annual and lifetime limits in subsection (1)(a)(iii);

(b) under major medical policies or contracts, inpatient benefits and outpatient benefits consisting of durational limits, dollar limits, deductibles, and coinsurance factors that are not less favorable than for physical illness generally, except that:

(i) inpatient treatment for mental illness is subject to a maximum yearly benefit of 21 days;

(ii) inpatient treatment for mental illness may be traded on a 2-for-1 basis for a benefit for partial hospitalization through a program that complies with the standards for a partial hospitalization program that are published by the American association for partial hospitalization if the program is operated by a hospital;

(iii) inpatient and outpatient treatment for alcoholism and drug addiction, excluding costs for medical detoxification, may be subject to a maximum benefit of $6,000 for a 12-month period until a lifetime maximum inpatient benefit of $12,000 is met, after which the annual benefit may be reduced to $2,000;

(iv) costs for medical detoxification treatment, which must be paid the same as any other illness under the terms of the contract and are not subject to the annual and lifetime benefits in subsection (1)(b)(iii) and;

(v) outpatient treatment for mental illness may be subject to a maximum yearly benefit of no less than

$2,000, but this subsection (1)(b)(v) does not apply to benefits for services furnished before September 30, 2001, unless the group health plan or group health insurance coverage is exempt from the requirements of subsection (2) pursuant to subsection (3) or (4).

(2) A group health plan or group health insurance coverage offered in connection with a group health plan may not impose an aggregate dollar limit on an annual or lifetime basis more restrictively for mental health benefits than for medical and surgical benefits covered by the plans. In the case of a plan that has different aggregate lifetime limits and different annual limits on various categories of medical and surgical benefits, the commissioner shall establish rules for determining a weighted average aggregate lifetime limit and weighted average annual limit to apply to mental health benefits. This subsection does not apply to benefits for services furnished on or after September 30, 2001.

(3) Subsection (2) does not apply to a group health plan or health insurance coverage offered in connection with a group health plan in the small group market.

(4) Subsection (2) does not apply to a group health plan or health insurance coverage offered in connection with a group health plan if the application of subsection (2) results in an increase in the cost under the group health plan or for coverage of at least 1%. This subsection applies separately to each benefit package option in the case of a group health plan that offers a participant or beneficiary two or more benefit package options under the group health plan. (Terminates September 30, 2001--sec. 54, Ch. 416, L. 1997.)

33-22-703. (Effective October 1, 2001) Coverage for mental illness, alcoholism, and drug addiction. A group health plan or a health insurance issuer that provides group health insurance coverage shall provide for Montana residents covered by the plan at least the following level of benefits for the necessary care and treatment of mental illness, alcoholism, and drug addiction:

(1) under basic inpatient expense policies or contracts, inpatient hospital benefits and outpatient benefits consisting of durational limits, dollar limits, deductibles, and coinsurance factors that are not less favorable than for physical illness generally, except that:

(a) inpatient treatment for mental illness is subject to a maximum yearly benefit of 21 days;

(b) inpatient treatment for mental illness may be traded on a 2-for-1 basis for a benefit for partial hospitalization through a program that complies with the standards for a partial hospitalization program that are published by the American association for partial hospitalization if the program is operated by a hospital;

(c) inpatient and outpatient treatment for alcoholism and drug addiction, excluding costs for medical detoxification, is subject to a maximum benefit of $6,000 for a 12-month period until a lifetime maximum inpatient

benefit of $12,000 is met, after which the annual benefit may be reduced to $2,000 and;

(d) costs for medical detoxification treatment must be paid the same as any other illness under the terms of the contract and are not subject to the annual and lifetime limits in subsection (1)(c);

(2) under major medical policies or contracts, inpatient benefits and outpatient benefits consisting of durational limits, dollar limits, deductibles, and coinsurance factors that are not less favorable than for physical illness generally, except that:

(a) inpatient treatment for mental illness~~, alcoholism, and drug addiction~~ is subject to a maximum yearly benefit of 21 days;

(b) inpatient treatment for mental illness may be traded on a 2-for-1 basis for a benefit for partial hospitalization through a program that complies with the standards for a partial hospitalization program that are published by the American association for partial hospitalization if the program is operated by a hospital;

(c) inpatient and outpatient treatment for alcoholism and drug addiction, excluding costs for medical detoxification, may be subject to a maximum benefit of $6,000 for a 12-month period until a lifetime maximum inpatient benefit of $12,000 is met, after which the annual benefit may be reduced to $2,000;

(d) costs for medical detoxification treatment must be paid the same as any other illness under the terms of the contract and are not subject to the annual and lifetime benefits in subsection (2)(c) and;

(e) outpatient treatment for mental illness may be subject to a maximum yearly benefit of no less than $2,000, but this subsection (2)(e) does not apply to benefits for services furnished before September 30, 2001."

Section 58. Section 33-22-704, MCA, is amended to read:

"33-22-704. Applicability. Except as provided in 33-22-706, this part applies to policies, certificates, contracts, or any employees' health and welfare fund that provides accident and health insurance benefits, established, delivered, issued for delivery, or renewed after September 30, 1987, but does not apply to blanket, short-term travel, accident-only, limited or specified disease, individual conversion policies or contracts, or to policies or contracts designed for issuance to persons eligible for coverage under Title XVIII of the Social Security Act, known as medicare, or any other similar coverage under state or federal governmental plans."

Section 59. Section 33-22-1002, MCA, is amended to read:

"33-22-1002. Availability of coverage for home health care. Insurers and health services corporations transacting health insurance business in this state ~~must~~ shall make available, under group insurance policies or

certificates and under group hospital and medical service plan contracts, benefits for home health care. Applicants for a group policy, certificate, or contract may select any level of benefits ~~as~~ that may be offered by the insurer or service plan corporation."

Section 60. Section 33-22-1003, MCA, is amended to read:

"33-22-1003. Applicability. This part applies to policies, certificates, or contracts delivered or issued for delivery in this state after January 29, 1981, but does not apply to blanket, short-term travel, accident-only, limited or specified disease, or individual conversion policies or contracts, ~~or~~ to policies or contracts designed for coverage under Title XVIII of the Social Security Act, known as Medicare, or to any other similar coverage under federal governmental plans."

Section 61. Section 33-22-1810, MCA, is amended to read:

"33-22-1810. Renewability of coverage. (1) A health benefit plan subject to the provisions of this part is renewable with respect to all eligible employees or their dependents, at the option of the small employer, except in any of the following cases:

(a) nonpayment of the required premium;

(b) fraud or misrepresentation of the small employer or with respect to coverage of individual insureds or their representatives;

(c) noncompliance with the carrier's minimum participation requirements;

(d) noncompliance with the carrier's employer contribution requirements;

(e) repeated misuse of a restricted network provision;

(f) election by the small employer carrier to not renew all of its health benefit plans delivered or issued for delivery to small employers in this state, in which case the small employer carrier shall:

(i) provide advance notice of this decision under this subsection (1)(f) to the commissioner in each state in which it is licensed; and

(ii) at least 180 days prior to the nonrenewal of ~~any~~ all small employer health benefit plans by the carrier, provide notice of the decision not to renew coverage to all affected small employers and to the commissioner in each state in which an affected insured individual is known to reside. Notice to the commissioner under this subsection (1)(f) must be provided at least 3 working days prior to the notice to the affected small employers.

(g) the commissioner finds that the continuation of the coverage would:

(i) not be in the best interests of the policyholders or certificate holders; or

(ii) impair the carrier's ability to meet its contractual obligations.

(2) If the commissioner makes a finding under subsection (1)(g), the commissioner shall assist affected small employers in finding replacement coverage.

(3) (a) A small employer carrier that elects not to renew ~~a~~ all of its health benefit ~~plan~~ plans under subsection (1)(f) is prohibited from writing new business in the small employer market in this state for a period of 5 years from the date of notice to the commissioner.

(b) The provisions of 33-22-524(3) apply to a small employer carrier that elects to renew only a portion, but not all, of its small employer health benefit plans.

(4) In the case of a small employer carrier doing business in one established geographic service area of the state, the rules set forth in this section apply only to the carrier's operations in that service area."

Section 62. Section 33-25-301, MCA, is amended to read:

"33-25-301. Refusal, suspension, or revocation of title insurance producer's license. (1) In addition to the causes provided in 33-17-1001, the commissioner may refuse to license an applicant or renew the license of a person as a title insurance producer or may suspend or revoke a title insurance producer's license or may fine a title insurance producer or applicant, after notice and opportunity for a hearing, if~~, after a hearing held after notice as required in 33-17-1001, he~~ the commissioner finds that the license applicant or licensee has:

(a) made a material misstatement in an application for a title insurance producer license;

(b) commingled funds belonging to applicants, escrow participants, or others;

(c) intentionally misrepresented the terms of a title insurance policy to an applicant or policyholder or has misrepresented material facts to, concealed material facts from, or made false statements to a party to an escrow, settlement, or closing transaction;

(d) in ~~the conduct of his~~ conducting affairs ~~under his~~ as a title insurance ~~producer's license~~ producer, used coercive practices or ~~shown himself to be financially irresponsible~~ demonstrated financial irresponsibility;

(e) aided, abetted, or assisted another person in violating the provisions of this title or a rule adopted by the commissioner.

(2) The commissioner may impose any other appropriate penalty provided for in this title.

(3) The commissioner may refuse, suspend, or revoke the license of a person licensed as a title insurance producer for the actions described in subsection (1) ~~of~~ committed by any individual designated in the

license ~~to exercise its powers~~."

Section 63. 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; 33-3-431; 33-3-701 through 33-3-704; 33-17-101; 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 64. Section 33-30-107, MCA, is amended to read:

"33-30-107. Annual statement. (1) On or before March 1 of each year, each health service corporation shall file an annual statement for the preceding year on the ~~N.A.I.C.~~ national association of insurance commissioners' health blank form with the commissioner of insurance. This annual statement must be completed in accordance with the annual statement instructions and the Accounting Practices and Procedures Manual of the national association of insurance ~~commissioners' annual statement instructions~~ commissioners. The statement must be accompanied by an actuarial opinion attesting to the insurer's reserves.

(2) The health service corporation shall file a statement containing any other information concerning its financial affairs that may be reasonably requested by the commissioner.

(3) (a) Each health service corporation shall file electronic versions of its annual and quarterly financial statements with the national association of insurance commissioners. The date for submission of the annual statement electronic filing is March 1. The dates for submission of the quarterly statement electronic filing are as follows:

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

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

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

(b) The commissioner may exempt health service corporations operating only in Montana from these filing requirements.

(4) The commissioner may, after notice and hearing, suspend or revoke a health service corporation's license or impose a fine not to exceed $100 a day and not to exceed $1,000 upon a health service corporation that fails to file an annual statement as required by this part."

Section 65. Section 33-30-108, MCA, is amended to read:

"33-30-108. License required. (1) A person may not act as a health service corporation and a health service corporation may not conduct business in this state except as authorized by a license issued by the commissioner.

(2) ~~A license may be issued by the commissioner only after the person has complied with the applicable provisions of this title~~ The commissioner may issue a license after the person has complied with the applicable provisions of this title and has submitted an application on a form prescribed by the commissioner.

(3) A health service corporation is entitled to a continuation of its license upon payment of the annual continuation fee specified in 33-30-204 on or before March 1 of each year and upon continued compliance with the provisions of this title.

(4) ~~A license issued or continued under this section may be revoked or suspended by the commissioner for violation of this title~~ The commissioner may revoke or suspend any license issued under this section for violations of this title."

Section 66. Section 33-31-111, MCA, is amended to read:

"33-31-111. Statutory construction and relationship to other laws. (1) Except as otherwise provided in this chapter, the insurance or health service corporation laws do not apply to 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) Chapter 1, parts 12 and 13, of this title, 33-2-1114, 33-2-1211, 33-2-1212, 33-3-422, 33-3-431, 33-15-308, 33-22-131, 33-22-136, 33-22-141, 33-22-142, 33-22-246, 33-22-247, 33-22-514, 33-22-523, 33-22-524, 33-22-526, and 33-22-706 apply to health maintenance organizations."

Section 67. Section 33-31-211, MCA, is amended to read:

"33-31-211. Annual statements -- revocation for failure to file -- penalty for false swearing. (1) Unless it is operated by an insurer or a health service corporation as a plan, each authorized health maintenance organization shall annually on or before March 1 file with the commissioner a full and true statement of its financial condition, transactions, and affairs as of the preceding December 31. The statement must be in the general form and content required by the commissioner. ~~and~~ The statement must be completed in accordance with the national association of insurance commissioners' annual statement instructions and the Accounting Practices and Procedures Manual of the national association of insurance commissioners. The statement must be verified by the oath of at least two principal officers of the health maintenance organization. The commissioner may waive any verification under oath. In addition, a health maintenance organization shall, unless it is operated by an insurer or a health service corporation as a plan, annually file on or before June 1 an audited financial statement. A health maintenance organization's audited financial statement must comply with rules adopted by the commissioner concerning audited financial statements.

(2) At the time of filing the annual statement required by March 1, the health maintenance organization shall pay the commissioner the fee for filing the statement as prescribed in 33-31-212. The commissioner may

refuse to accept the fee for continuance of the insurer's certificate of authority, as provided in 33-31-212, may impose a penalty of $100, or may suspend or revoke the certificate of authority of a health maintenance organization that fails to file an annual statement when due. Each day that the insurer fails to file its annual statement constitutes a separate violation. The total penalty may not exceed $1,000.

(3) The commissioner may, after notice and hearing, impose a fine not to exceed $5,000 for each violation upon a director, officer, partner, member, insurance producer, or employee of a health maintenance organization who knowingly subscribes to or concurs in making or publishing an annual statement required by law that contains a material statement that is false.

(4) The commissioner may require reports considered reasonably necessary and appropriate to enable the commissioner to carry out the duties required of the commissioner under this chapter, including but not limited to a statement of operations, transactions, and affairs of a health maintenance organization operated by an insurer or a health service corporation as a plan."

Section 68. Section 33-31-311, MCA, is amended to read:

"33-31-311. Insurance producer license required -- application, issuance, renewal, fees -- penalty. (1) An individual, partnership, or corporation may not act as or represent to the public that the individual, partnership, or corporation is an insurance producer of a health maintenance organization unless the individual, partnership, or corporation is:

(a) licensed as a disability insurance producer by the commissioner pursuant to chapter 17, parts 1, 2, and 4 of this title or licensed as an insurance producer as provided in 33-30-311; and

(b) appointed or authorized by the health maintenance organization to solicit health care service agreements on its behalf.

(2) Application, appointment, and qualification for a health maintenance organization insurance producer license, fees applicable to and the issuance of a health maintenance organization insurance producer license, and renewal of a health maintenance organization insurance producer license must be in accordance with the provisions of chapter 17 that apply to a disability insurance producer.

(3) An individual, partnership, or corporation ~~who~~ that holds a disability insurance producer license on October 1, 1987, need not requalify by an examination to be licensed as a health maintenance organization insurance producer.

(4) The commissioner may, in accordance with ~~33-1-313,~~ 33-1-317, 33-17-411, and chapter 17, part 10,

suspend, revoke, refuse to issue or renew a health maintenance organization insurance producer license~~,~~ or impose a fine upon the licensee."

Section 69. Section 33-31-401, MCA, is amended to read:

"33-31-401. Examination. (1) The commissioner may examine the affairs of a health maintenance organization as often as is reasonably necessary to protect the interests of the people of this state. The commissioner shall make an examination at least once every 3 years. The commissioner shall examine a health maintenance organization operated by an insurer or health service corporation as a plan at least once every 5 years. The provisions of 33-1-408 and 33-1-409 apply to examinations under this section.

(2) Each authorized health maintenance organization and provider shall submit its relevant books and records for the examinations and in every way facilitate the examinations. For the purpose of examination, the commissioner may administer oaths to and examine the officers and insurance producers of the health maintenance organization and the principals of the providers concerning their business.

(3) (a) Upon presentation of a detailed account of the charges and expenses of examinations by the commissioner, the health maintenance organization being examined shall pay to the examiner as necessarily incurred on account of the examination the actual travel expenses, a reasonable living-expense allowance, and a per diem, all at reasonable rates customary therefor and as established or adopted by the commissioner. The commissioner may present an account periodically during the course of the examination or at the termination of the examination as the commissioner considers proper. A person may not pay and an examiner may not accept any additional emolument on account of any examination.

(b) If a health maintenance organization fails to pay the charges and expenses as referred to in subsection (3)(a), the commissioner shall pay them out of the funds of the commissioner in the same manner as other disbursements of funds. The amount paid is a lien upon all of the person's assets and property in this state and may be recovered by suit by the attorney general on behalf of the state and restored to the appropriate fund.

(4) In lieu of an examination, the commissioner may accept the report of an examination made by the commissioner of another state."

Section 70. Section 45-6-301, MCA, is amended to read:

"45-6-301. Theft. (1) A person commits the offense of theft when the person purposely or knowingly obtains or exerts unauthorized control over property of the owner and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property; or

(c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment probably will deprive the owner of the property.

(2) A person commits the offense of theft when the person purposely or knowingly obtains by threat or deception control over property of the owner and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property; or

(c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment probably will deprive the owner of the property.

(3) A person commits the offense of theft when the person purposely or knowingly obtains control over stolen property knowing the property to have been stolen by another and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property; or

(c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment probably will deprive the owner of the property.

(4) A person commits the offense of theft when the person purposely or knowingly obtains or exerts unauthorized control over any part of any public assistance provided under Title 52 or 53 by a state or county agency, regardless of the original source of assistance, by means of:

(a) a knowingly false statement, representation, or impersonation; or

(b) a fraudulent scheme or device.

(5) A person commits the offense of theft when the person purposely or knowingly obtains or exerts or helps another obtain or exert unauthorized control over any part of any benefits provided under Title 39, chapter 71 or 72, by means of:

(a) a knowingly false statement, representation, or impersonation; or

(b) deception or other fraudulent action.

(6) A person commits the offense of theft when the person purposely or knowingly commits insurance

fraud as provided in 33-1-1202 or 33-1-1302.

(7) (a) A person convicted of the offense of theft of property not exceeding $1,000 in value shall be fined not to exceed $1,000 or be imprisoned in the county jail for any term not to exceed 6 months, or both. A person convicted of a second offense shall be fined $1,000 or be imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of a third or subsequent offense shall be fined $1,000 and be imprisoned in the county jail for a term of not less than 30 days or more than 6 months.

(b) A person convicted of the offense of theft of property exceeding $1,000 in value or theft of any commonly domesticated hoofed animal shall be fined not to exceed $50,000 or be imprisoned in the state prison for any term not to exceed 10 years, or both.

(8) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the property."

Section 71. Section 61-12-310, MCA, is amended to read:

"61-12-310. Form of contract. ~~No~~ A motor club service contract ~~shall~~ may not be executed, issued, or delivered in this state unless it contains the following:

(1) the ~~exact corporate or other~~ name of the motor club service company;

(2) the ~~exact~~ location of its home office ~~and of its usual place of business in this state~~, giving street number, ~~and~~ city, and state;

(3) a provision that the contract may be canceled at any time by either the company or the holder~~,~~ and that the holder ~~shall~~ is, if ~~he~~ the holder has actually paid the consideration, ~~thereupon be~~ entitled to the unused portion of the consideration paid for ~~such~~ the contract, calculated on a pro rata basis without any deductions;

(4) a provision plainly specifying the services promised and that the holder ~~shall not be~~ is not required to pay any sum for any services specified in the contract in addition to the amount specified in the contract~~,~~ and further specifying the territory ~~wherein such~~ where the services are to be rendered~~,~~ and the date when ~~such~~ the service ~~shall commence~~ commences."

Section 72. Section 61-12-315, MCA, is amended to read:

"61-12-315. Penalty for violation. ~~If any~~ A person ~~shall violate~~ violating the provisions of this part~~, such person shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than $500 or by imprisonment in the county jail for not more than 6 months or by both such fine and~~

~~imprisonment~~ is liable pursuant to 33-1-317."

Section 73. Repealer. Sections 33-1-213, 33-1-702, 33-1-703, 33-1-704, 33-1-706, 33-2-706, 33-4-405, 33-11-106, 33-17-221, 33-17-404, 33-17-1107, 33-17-1111, 33-17-1112, 33-17-1113, 33-17-1114, and 33-23-311, MCA, are repealed.

Section 74. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 33, chapter 1, part 1, and the provisions of Title 33, chapter 1, part 1, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 33, chapter 3, and the provisions of Title 33, chapter 3, apply to [section 2].

(3) [Section 3] is intended to be codified as an integral part of Title 33, chapter 30, and the provisions of Title 33, chapter 30, apply to [section 3].

(4) [Section 4] is intended to be codified as an integral part of Title 33, chapter 1, part 7, and the provisions of Title 33, chapter 1, part 7, apply to [section 4].

(5) [Section 5] is intended to be codified as an integral part of Title 33, chapter 18, and the provisions of Title 33, chapter 18 apply to [section 5].

(6) [Section 6] is intended to be codified as an integral part of Title 33, chapter 20, part 13, and the provisions of Title 33, chapter 20, part 13, apply to [section 6].

- END -

I hereby certify that the within bill,

HB 0504, originated in the House.

_____

Chief Clerk of the House

_____

Speaker of the House

Signed this _____ day

of _____, 2019.

_____

President of the Senate

Signed this _____ day

of _____, 2019.

HOUSE BILL NO. 504

INTRODUCED BY D. GALLIK, PRICE

BY REQUEST OF THE STATE AUDITOR

AN ACT GENERALLY REVISING THE INSURANCE LAWS; PROVIDING THAT PHARMACY, OPTICAL, AND DENTAL DISCOUNT CARDS MUST STATE THAT THE DISCOUNT IS NOT INSURANCE; PROVIDING THAT THE COMMISSIONER OF INSURANCE MAY REQUEST BIOGRAPHICAL INFORMATION FROM OFFICERS OF FARM MUTUAL ASSOCIATIONS, RECIPROCAL INSURERS, HEALTH SERVICE CORPORATIONS, AND HEALTH MAINTENANCE ORGANIZATIONS; REQUIRING HEALTH SERVICE ORGANIZATIONS TO FILE A COPY OF ARTICLES OF AMENDMENT WITH THE COMMISSIONER; PROVIDING FOR A STATUTORY TIME LIMIT FOR ACTING ON VIOLATIONS; PROHIBITING INSURANCE PRODUCERS CONNECTED TO LONG-TERM CARE FACILITIES FROM SELLING LIFE OR DISABILITY POLICIES TO RESIDENTS; EXEMPTING SERVICE CONTRACTS FROM THE INSURANCE CODE; PROVIDING THAT MECHANICAL BREAKDOWN INSURANCE, PREPAID LEGAL INSURANCE, INVOLUNTARY UNEMPLOYMENT INSURANCE, AND GAP INSURANCE ARE TYPES OF CASUALTY INSURANCE; REVISING THE PRIORITY OF THE DISTRIBUTION OF CLAIMS; INCREASING THE AMOUNT OF SURPLUS FUNDS PROVIDED FOR CERTAIN INSURERS; REQUIRING THE COMMISSIONER TO EXAMINE HEALTH MAINTENANCE ORGANIZATIONS OPERATED BY INSURERS OR HEALTH SERVICE CORPORATIONS AT LEAST ONCE EVERY 5 YEARS; AMENDING SECTIONS 17-2-121, 33-1-102, 33-1-206, 33-1-214, 33-1-215, 33-1-216, 33-1-217, 33-1-311, 33-1-313, 33-1-314, 33-1-315, 33-1-316, 33-1-601, 33-1-701, 33-1-711, 33-2-307, 33-2-313, 33-2-316, 33-2-708, 33-2-1363, 33-2-1371, 33-2-1388, 33-3-203, 33-3-302, 33-3-303, 33-4-101, 33-4-407, 33-5-401, 33-10-102, 33-12-103, 33-12-202, 33-12-203, 33-12-212, 33-14-202, 33-15-414, 33-16-102, 33-16-403, 33-17-502, 33-17-1001, 33-17-1103, 33-17-1204, 33-19-406, 33-20-1201, 33-20-1209, 33-20-1210, 33-20-1211, 33-20-1212, 33-22-508, 33-22-701, 33-22-702, 33-22-703, 33-22-704, 33-22-1002, 33-22-1003, 33-22-1810, 33-25-301, 33-30-102, 33-30-107, 33-30-108, 33-31-111, 33-31-211, 33-31-311, 33-31-401, 45-6-301, 61-12-310, AND 61-12-315, MCA; AND REPEALING SECTIONS 33-1-213, 33-1-702, 33-1-703, 33-1-704, 33-1-706, 33-2-706, 33-4-405, 33-11-106, 33-17-221, 33-17-404, 33-17-1107, 33-17-1111, 33-17-1112, 33-17-1113, 33-17-1114, AND 33-23-311, MCA.