

HOUSE BILL NO. 169
INTRODUCED BY J. KEANE
BY REQUEST OF THE STATE AUDITOR

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAWS OF LICENSING FOR INSURANCE PRODUCERS, ADJUSTERS, AND CONSULTANTS; PROVIDING FOR INACTIVE STATUS FOR INSURANCE PRODUCERS SERVING IN THE ARMED FORCES; REQUIRING AN INSURANCE PRODUCER LICENSING BACKGROUND EXAMINATION AND PROVIDING EXAMINATION CRITERIA; DEFINING "CAR RENTAL INSURANCE"; REVISING THE PAYMENT OF FEES FOR LICENSES AND RENEWAL OF LICENSES RELATING TO INSURANCE; REVISING THE STATUS OF NONRESIDENT INSURANCE PRODUCERS; PROVIDING FOR BIENNIAL RENEWAL OF LICENSES AND PAYMENT OF BIENNIAL LICENSE FEES FOR CERTAIN PRODUCERS; SIMPLIFYING THE INSURANCE CONTINUING EDUCATION REQUIREMENTS; AMENDING SECTIONS 33-1-211, 33-2-305, 33-2-708, 33-7-525, 33-7-532, 33-17-102, 33-17-103, 33-17-201, 33-17-211, 33-17-212, 33-17-214, 33-17-301, 33-17-502, 33-17-503, 33-17-504, 33-17-1001, 33-17-1002, 33-17-1203, 33-17-1205, AND 33-17-1207, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

NEW SECTION. Section 1. Inactive status -- insurance producers serving in armed forces. (1) The commissioner may place an insurance producer on inactive status if the insurance producer enters active service in the armed forces of the United States.

(2) An insurance producer may not transact the business of insurance while on inactive status.

(3) The commissioner shall waive the continuing education requirements in 33-17-1205 and the fee in 33-2-708 while an insurance producer is on inactive status.

(4) In order to be placed on inactive status, an insurance producer shall notify the commissioner when called to active service.

(5) In order to be taken off inactive status, an insurance producer shall notify the commissioner when discharged from active service.

NEW SECTION. Section 2. Licensing background examination -- entity registry criteria. (1) (a)

Each applicant shall obtain at the applicant's own cost a complete background examination. The background examination report must provide information to confirm:

- (i) the applicant's:
 - (A) identity;
 - (B) current address;
 - (C) professional license certification; and
 - (D) military service; and
 - (ii) (A) existing or ongoing criminal investigations and court records relating to the applicant; and
 - (B) regulatory agencies' disciplinary actions concerning the applicant.
- (b) The background examination is confidential and may not be held as part of the licensee's public file.
- (2) An entity may not conduct licensing background examinations unless the entity maintains a current

filing with the commissioner. The filing must:

- (a) contain a description of the criteria, standards, and procedures used in conducting the background examination;
 - (b) ensure that the examination will be based on nationally recognized criteria, standards, and procedures; and
 - (c) ensure confidentiality of the applicant's information.
- (3) The commissioner may adopt rules to further implement this section, including but not limited to rules on the length of time that a background examination is valid and rules for the electronic filing of fingerprints.

NEW SECTION. Section 3. Rental car insurance. Rental car insurance is insurance that:

- (1) provides coverage for periods of less than 90 days;
- (2) applies only to the rental car subject to the rental agreement; and
- (3) is limited to the following kinds of insurance:
 - (a) personal accident insurance for renters and other rental car occupants, for accidental death or dismemberment, and for medical expenses resulting from an accident that occurs with the rental car during the rental period;
 - (b) liability insurance that provides protection to the renters and other authorized drivers of a rental car for liability arising from the operation or use of the rental car during the rental period;
 - (c) personal effects insurance that provides coverage to renters and other vehicle occupants for loss of or damage to personal effects in the rental car during the rental period; or

(d) motor club services, as defined in 61-12-301.

NEW SECTION. Section 4. Rulemaking authority for surety insurers. The commissioner may adopt rules regarding surety insurers who sell, solicit, or negotiate commercial bail bonds. The rules must include but are not limited to rules regarding the receipt of collateral, the description of collateral received, the penalty for failure to return collateral, and an annual list of forfeitures of bonds.

NEW SECTION. Section 5. Status of nonresident insurance producers -- biennial renewal of license -- payment of fees. A nonresident insurance producer's license continues in force until lapsed, suspended, revoked, or terminated. The license lapses if the licensee fails to remit a biennial renewal fee.

Section 6. Section 33-1-211, MCA, is amended to read:

"33-1-211. Surety insurance. Surety insurance includes:

(1) fidelity insurance ~~which is insurance guaranteeing the fidelity of persons holding positions of public or private trust; that:~~

(a) guarantees the honesty or faithful performance of persons who hold positions of public or private trust;

(b) indemnifies against loss resulting from forgery or alteration of documents; or

(c) indemnifies banks, stockbrokers, insurance companies, and other financial institutions against:

(i) loss of money, securities, and other tangible property, while on the premises of the insured or in transit, through theft, deceptive practices, destruction, or disappearance;

(ii) loss of or damage to the insured's premises or furniture, fixtures, and equipment resulting from actual or attempted burglary, robbery, arson, or malicious mischief; or

(iii) liability for loss of or damage to customers' property while secured in safe deposit boxes;

(2) ~~insurance guaranteeing the performance of contracts, other than insurance policies, and guaranteeing and executing bonds, undertakings, and contracts of suretyship~~ insurance that covers obligations to pay the debt or be responsible for the default of another when there is a legal relationship based upon a written contract in which one person undertakes to answer to another for the debt or default of a third person resulting from the third person's failure to pay or perform as required by an underlying contract, permit, law, or rule;

(3) ~~insurance indemnifying banks, bankers, brokers, or financial or moneyed corporations or associations;~~

~~— (a) against check forgery or alteration or against loss resulting from any cause of bills of exchange, notes, bonds, securities, evidences of debt, deeds, mortgages, warehouse receipts, or other valuable papers, documents, money, precious metals and articles made therefrom, jewelry, watches, necklaces, bracelets, gems, or precious and semiprecious stones, including any loss while being transported in armored motor vehicles, by mail, or by messenger but not including any other risks of transportation or navigation;~~

~~— (b) against loss or damage to the insured's premises or to his furnishings, fixtures, equipment, safes, and vaults therein caused by burglary, robbery, theft, or criminal mischief or any attempt thereat commercial bail bonds issued to ensure the presence of a criminal defendant at a court proceeding pursuant to 46-9-403(4).~~"

Section 7. Section 33-2-305, MCA, is amended to read:

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

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

(a) remitted to the commissioner the annual fee prescribed by 33-2-708;

(b) submitted to the commissioner a completed license application on a form supplied by the commissioner; and

(c) been licensed as a property and casualty insurance producer continuously for 5 years or more; ~~and~~

~~— (d) filed with the commissioner and, for as long as the license remains in effect, kept in force a bond in favor of the state of Montana in the amount of \$10,000, with authorized corporate sureties approved by the commissioner. The bond must be conditioned that the insurance producer will conduct business under the license in accordance with the provisions of The Surplus Lines Insurance Law and that the insurance producer will promptly remit the taxes provided in 33-2-311. The bond may not be terminated unless the surety gives the surplus lines insurance producer, the producing insurance producer, and the commissioner at least 30 days' prior written notice of termination.~~

(3) ~~The license expires on April 1 after its date of issue. A surplus lines insurance producer shall renew the license on or before March 1 of each year upon payment of the annual renewal fee prescribed in 33-2-708. A surplus lines insurance producer who fails to apply for a renewal of the license on or before March 1 shall pay a fine of \$100 before the commissioner renews the license~~ licensee shall renew the license on a form prescribed

by the commissioner. The commissioner may establish rules for biennial renewal of the license. A license lapses if not renewed.

(4) A corporation is eligible to be licensed as a surplus lines insurance producer if:

(a) the corporate license lists the individuals within the corporation who have satisfied the requirements of this part to become surplus lines insurance producers; and

(b) only those individuals listed on the corporate license transact surplus lines insurance.

(5) This section may not be construed to require agents, producers, or brokers acting as intermediaries between a surplus lines insurance producer and an unauthorized insurer under this part to hold a valid Montana surplus lines insurance producer's license."

Section 8. 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~~ \$100;

(B) ~~annual~~ biennial renewal of license, ~~10.00~~ \$50;

(C) lapsed license reinstatement fee, \$100;

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

~~(ii)~~(iii) surplus lines insurance ~~producer~~ producer's license:

(A) application for original license and for issuance of license, if issued, ~~50.00~~ \$50;

(B) ~~annual~~ biennial renewal of license, ~~50.00~~ \$100;

(C) lapsed license reinstatement fee, \$200;

(iv) insurance adjuster's license:

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

(B) biennial renewal of license, \$100;

(C) lapsed license reinstatement fee, \$200;

(v) insurance consultant's license:

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

(B) biennial renewal of license, \$100;

(C) lapsed license reinstatement fee, \$200;

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

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

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

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

(3) The commissioner shall promptly deposit with the state treasurer to the credit of the general fund all fines and penalties and those amounts received pursuant to 33-2-311, 33-2-705, and 33-28-201. 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 9. Section 33-7-525, MCA, is amended to read:

"33-7-525. Insurance producer defined -- fraternal benefit society insurance contracts. (1) The term "insurance producer", as used in this chapter, means any authorized or acknowledged insurance producer of a society who acts as such an insurance producer in the solicitation, negotiation, or ~~procurement or making sale~~ of a life insurance, accident and health insurance, or annuity contract.

(2) The term "~~insurance producer~~" does not include any regular salaried officer or employee of a licensed society who devotes substantially all of ~~his~~ the officer's or employee's services to activities other than the solicitation of fraternal insurance contracts from the public and who receives for the solicitation of ~~such~~ the contracts no commission or other compensation directly dependent upon the amount of business obtained."

Section 10. Section 33-7-532, MCA, is amended to read:

"33-7-532. Producer Insurance producer licensing -- fraternal benefit society. (1) A society's insurance producer ~~must be~~ is considered to be an insurance producer and is subject to the same licensing requirements as insurance producers under Title 33, chapter 17, ~~except that an examination is not required of~~

an individual who is licensed in this state as an insurance producer for a society as to the kind of insurance to be transacted on or before October 1, 1981, and who continues to be licensed as an insurance producer.

(2) A society doing business in this state may not pay to a person who is not a licensed insurance producer of the society any commission or other compensation for any services in obtaining in this state any new contract of life, accident, or health insurance or any new annuity contract."

Section 11. Section 33-17-102, MCA, is amended to read:

"33-17-102. Definitions. As used in this title, the following definitions apply:

(1) (a) "Adjuster" means a person who, on behalf of the insurer, for compensation as an independent contractor or as the employee of an independent contractor or for a fee or commission investigates and negotiates the settlement of claims arising under insurance contracts or otherwise acts on behalf of the insurer.

(b) The term does not include a:

~~(a)~~(i) licensed attorney who is qualified to practice law in this state;

~~(b)~~(ii) salaried employee of an insurer or of a managing general agent;

~~(c)~~(iii) licensed insurance producer who adjusts or assists in adjustment of losses arising under policies issued by the insurer; or

~~(d)~~(iv) licensed third-party administrator who adjusts or assists in adjustment of losses arising under policies issued by the insurer.

(2) "Adjuster license" means a document issued by the commissioner that authorizes a person to act as an adjuster.

(3) (a) "Administrator" means a person who collects charges or premiums from residents of this state in connection with life, disability, property, or casualty insurance or annuities or who adjusts or settles claims on these coverages.

(b) The term does not ~~mean~~ include:

(i) an employer on behalf of its employees or on behalf of the employees of one or more subsidiaries of affiliated corporations of the employer;

(ii) a union on behalf of its members;

(iii) (A) an insurer that is either authorized in this state or acting as an insurer with respect to a policy lawfully issued and delivered by it in and pursuant to the laws of a state in which the insurer is authorized to transact insurance; or

(B) a health service corporation as defined in 33-30-101;

(iv) a life, disability, property, or casualty insurance producer who is licensed in this state and whose activities are limited exclusively to the sale of insurance;

(v) a creditor on behalf of its debtors with respect to insurance covering a debt between the creditor and its debtors;

(vi) a trust established in conformity with 29 U.S.C. 186 or the trustees, agents, and employees of the trust;

(vii) a trust exempt from taxation under section 501(a) of the Internal Revenue Code or the trustees and employees of the trust;

(viii) a custodian acting pursuant to a custodian account that meets the requirements of section 401(f) of the Internal Revenue Code or the agents and employees of the custodian;

(ix) a bank, credit union, or other financial institution that is subject to supervision or examination by federal or state banking authorities;

(x) a company that issues credit cards and that advances for and collects premiums or charges from its credit card holders who have authorized it to do so, if the company does not adjust or settle claims;

(xi) a person who adjusts or settles claims in the normal course of the person's practice or employment as an attorney and who does not collect charges or premiums in connection with life or disability insurance or annuities; or

(xii) a person appointed as a managing general agent in this state whose activities are limited exclusively to those described in 33-2-1501(10) and Title 33, chapter 2, part 16.

(4) "Administrator license" means a document issued by the commissioner that authorizes a person to act as an administrator.

(5) (a) "Business entity" means a corporation, association, partnership, limited liability company, limited liability partnership, or other legal entity.

(b) The term does not include an individual.

~~(5)(6)~~ "Consultant" means a person who for a fee examines, appraises, reviews, or evaluates an insurance policy, annuity, or pension contract, plan, or program or who makes recommendations or gives advice on an insurance policy, annuity, or pension contract, plan, or program.

~~(6)(7)~~ "Consultant license" means a document issued by the commissioner that authorizes a person to act as an insurance consultant.

~~(7) "Controlled business" means insurance procured or to be procured by or through a person upon the life, person, property, or risks of the person or the person's spouse, employer, or business.~~

(8) "Individual" means a ~~private or natural person, as distinguished from a partnership, corporation, or association.~~

(9) "Insurance producer", except as provided in 33-17-103,:

~~_____ (a) means:~~

~~_____ (i) a person who solicits, negotiates, effects, procures, delivers, renews, continues, or binds:~~

~~_____ (A) policies of insurance for risks residing, located, or to be performed in this state; or~~

~~_____ (B) membership contracts as defined in 33-30-101;~~

~~_____ (ii) a managing general agent. For purposes of this chapter, the term "managing general agent" has the same meaning as set forth in 33-2-1501.~~

~~_____ (b) does not mean a customer service representative. For purposes of this definition, a "customer service representative" means a salaried employee of an insurance producer who assists and is responsible to the insurance producer.~~ means a person required to be licensed under the laws of this state to sell, solicit, or negotiate insurance.

(10) "Lapse" means the expiration of the license for failure to renew by the biennial renewal date.

~~(10)(11)~~ "License" means a document issued by the commissioner that authorizes a person to act as an insurance producer for the ~~kinds of insurance~~ lines of authority specified in the document. The license itself does not create actual, apparent, or inherent authority in the holder to represent or commit an insurer to a binding agreement.

~~(11)(12)~~ "Limited line credit insurance" includes credit life insurance, credit disability insurance, credit property insurance, credit unemployment insurance, involuntary unemployment insurance, mortgage life insurance, mortgage guaranty insurance, mortgage disability insurance, gap insurance, and any other form of insurance offered in connection with an extension of credit that is limited to partially or wholly extinguishing the credit obligation and that the commissioner determines should be designated as a form of limited line credit insurance.

~~(12)(13)~~ "Limited line credit insurance producer" means a person who sells, solicits, or negotiates one or more forms of limited line credit insurance coverage to individuals through a master, corporate, group, or individual policy.

~~(13)(14)~~ "Limited lines insurance" means those lines of insurance ~~defined in 33-1-211 through 33-1-219 or any other line of insurance~~ that the commissioner finds necessary to recognize for the purposes of complying with 33-17-401(3).

~~(14)(15)~~ "Limited lines producer" means a person authorized by the commissioner to sell, solicit, or

negotiate limited lines insurance.

~~(15)~~(16) "Lines of authority" means any kind of insurance as defined in Title 33.

(17) "Negotiate" means the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms, or conditions of the contract if the person engaged in negotiation either sells insurance or obtains insurance from insurers for purchasers.

~~(16)~~(18) "Person" means an individual, ~~partnership, corporation, association, or other legal entity~~ a business entity.

~~(17)~~(19) "Public adjuster" means an adjuster employed by and representing the interests of the insured.

(20) "Sell" means to exchange a contract of insurance by any means, for money or its equivalent, on behalf of an insurance company.

(21) "Solicit" means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance.

(22) "Suspend" means to bar the use of a person's license for a period of time.

~~(18)~~(23) "Uniform application" means the national association of insurance commissioners' uniform application for resident and nonresident insurance producer licensing.

(24) "Uniform business entity application" means the national association of insurance commissioners uniform business entity application for resident and nonresident business entities."

Section 12. Section 33-17-103, MCA, is amended to read:

"33-17-103. Exemptions from definition of insurance producer. The definition of insurance producer contained in ~~33-17-102~~ does not include:

(1) ~~a person~~ an individual who is a regularly salaried officer or employee of an insurer and who is engaged in the performance of usual and customary executive, administrative, or clerical duties and whose duties do not include the negotiation, sale, or solicitation of insurance;

(2) ~~a person~~ an individual who is a salaried employee in the office of an insurance producer and who devotes ~~his~~ the individual's full time to clerical and administrative services, including the incidental taking of insurance applications and receipt of premiums in the office of ~~his~~ the individual's employer, if the ~~employee~~ individual does not receive any commissions on the applications and ~~his~~ the individual's compensation is not varied by the volume of applications or premiums ~~he~~ the individual takes or receives;

(3) a person who secures and furnishes information for the purpose of group life insurance, group

property and casualty insurance, group annuities, or group or blanket accident and disability insurance or for the purpose of enrolling individuals under such those plans, issuing certificates under such those plans, or otherwise assisting in administering such those plans; if no a commission is not paid for the service;

(4) an employer, his the employer's officers; or employees, or the trustees of an employee trust plan, to the extent that the employer, officers, employees, or trustees are engaged in the administration of or operation of a program of employee benefits for their own employees or the employees of their subsidiaries or affiliates if the program involves the use of insurance issued by an insurer and the employer, officers, employees, or trustees are not compensated in any manner, directly or indirectly, by the insurer issuing the contracts; ~~or~~

(5) a person who is:

(a) an employee of an insurer or of an organization employed by an insurer, which insurer or organization is engaged in the inspection, rating, or classification of insurance risks or in the supervision of the training of insurance producers; and

(b) not individually engaged in the selling, solicitation, or negotiation of insurance policies and contracts;

(6) an attorney advising a client on general insurance matters, provided the attorney does not sell, solicit, or negotiate insurance; or

(7) a salaried full-time employee who counsels or advises the employer or the subsidiaries or affiliates of the employer about the life insurance or annuities if the employee does not sell or solicit insurance or receive a commission or fee."

Section 13. Section 33-17-201, MCA, is amended to read:

"33-17-201. License required of insurance producer -- forms -- background examinations. (1) A ~~For subjects of insurance resident, located, or to be performed in this state, a person may not in this state sell, solicit, or negotiate insurance or act as or hold himself out to be an insurance producer for subjects of insurance located, residing, or to be performed in this state unless licensed as an insurance producer under this chapter.~~

(2) The commissioner may prescribe by rule and make available the forms required in connection with application for, issuance, continuation, suspension, or termination of a license.

(3) All resident applicants shall undergo prelicensing background examinations. The applicant or insurer shall pay the cost of the background examinations.

~~(3) Unless licensed as a life insurance producer as required by this section, a person may not in this state solicit life insurance or annuities or procure applications for life insurance or annuities or engage or hold himself out as engaging in the business of analyzing or abstracting life insurance policies or annuities or of~~

counseling or advising or giving opinions, other than as a licensed attorney, relative to insurance or annuities for fee, commission, or other compensation, other than as a salaried full-time employee counseling and advising his employer relative to the insurance interests of the employer and of the subsidiaries or business affiliates of the employer or with respect to the insurance interests of employees of the employer, subsidiaries, or affiliates under group insurance or similar insurance plans arranged by the employer or employers of the employees:

——— (4) A person licensed to sell coverage only for the all-risk federal crop insurance program shall receive a license restricted to that purpose.

——— (5) A representative of a fraternal benefit society who solicits and negotiates insurance contracts is an insurance producer and is subject to the same licensing requirements as those for an insurance producer, except that a license is not required of:

——— (a) an officer, employee, or secretary of a fraternal benefit society or of a subordinate lodge or branch of a fraternal benefit society who devotes substantially all of his time to activities other than the solicitation or negotiation of insurance contracts and who receives no commission or other compensation directly dependent upon the number or amount of insurance contracts solicited or negotiated; or

——— (b) a representative of a fraternal benefit society who devotes or intends to devote less than 50% of his time to the solicitation and procurement of insurance contracts for the fraternal benefit society. A person who in the preceding calendar year has solicited and procured life insurance with a face amount in excess of \$50,000 or, in the case of any other kind or kinds of insurance that the fraternal benefit society may write, on more than 25 individuals and who has received or will receive a commission or other compensation for the insurance is presumed to be devoting or intending to devote, 50% of his time to the solicitation or procurement of insurance contracts for the fraternal benefit society.

——— (6) The commissioner may not grant or extend a license to a person if the license is being or will be used to write controlled business. The commissioner shall consider a license to have been, or intended to be, used for the purpose of writing controlled business if, during any 12-month period, the aggregate amount of premiums on controlled business would exceed the aggregate amount of premiums on all other insurance business of the applicant or licensee."

Section 14. Section 33-17-211, MCA, is amended to read:

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

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

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

(2) A resident or nonresident business entity acting as an insurance producer is required to obtain an insurance producer's license. Application must be made using the uniform business entity application. In order to approve the application, the commissioner shall verify that:

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

~~(2)~~(3) A person acting as an insurance producer shall obtain a license. A person shall apply for a license on a form specified by the commissioner. Before approving the application, the commissioner shall verify that:

- (a) the person meets the requirements listed in subsection (1);
- (b) the person has paid the licensing fees stated in 33-2-708 for each individual licensed in conjunction

with the person's license. A licensed person shall promptly notify the commissioner of each change relating to an individual listed in the license.

(c) the person has designated a licensed officer responsible for compliance by the person with the insurance laws and rules of this state;

(d) each member and employee of a partnership and each officer, director, stockholder, or employee of a corporation who is acting as an insurance producer in this state has obtained a license;

(e) (i) if the person is a partnership or corporation, the transaction of insurance business is within the purposes stated in the partnership agreement or the articles of incorporation; and

(ii) if the person is a corporation, the secretary of state has issued a certificate of existence or authority under 35-1-1312 or filed articles of incorporation under 35-1-220.

~~(3)~~(4) The commissioner may license as a resident insurance producer an association of licensed Montana insurance producers, whether or not incorporated, formed and existing substantially for purposes other than insurance. The license must be used solely for the purpose of enabling the association to place, as a resident insurance producer, insurance of the properties, interests, and risks of the state of Montana and of other public agencies, bodies, and institutions and to receive the customary commission for the placement. The president and secretary of the association shall apply for the license in the name of the association, and the commissioner shall issue the license to the association in its name alone. The fee for the license is the same as that required by 33-2-708(1)(a). The commissioner may, after a hearing with notice to the association, revoke the license if the commissioner finds that continuation of the license is not in the public interest or that a ground listed in 33-17-1001 exists.

~~(4)~~(5) An insurance producer using an assumed business name shall register the name with the commissioner before using it."

Section 15. Section 33-17-212, MCA, is amended to read:

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

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

service to recover the cost of the examination from the applicant.

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

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

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

- (a) life insurance;
- (b) disability insurance;
- (c) property insurance. For the purposes of this provision, property insurance includes marine insurance.
- (d) casualty insurance;
- (e) surety insurance;
- (f) ~~credit life and disability~~ limited lines credit insurance;
- (g) title insurance.

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

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

(b) an applicant for a license covering the same kind or kinds of insurance as to which the applicant was licensed in this state, other than under a temporary license, within the 12 months immediately preceding the date of application unless the commissioner has suspended, revoked, or ~~refused to continue~~ terminated the previous license, ~~except that this subsection (6)(b) does not apply to a title insurance producer, as defined in 33-25-105;~~

(c) an applicant for a license as a nonresident insurance producer;

~~(d) an applicant for a license to sell all-risk federal crop insurance if the applicant provides certification from an appropriate governmental agency to the commissioner that the applicant is qualified to sell the insurance;~~

~~(e)~~ (d) transportation ticket agents of common carriers applying for a license to solicit and sell only:

(i) accident insurance ticket policies; or

(ii) insurance of personal effects while being carried as baggage on a common carrier, as incidental to their duties as transportation ticket agents;

~~(f)~~ (e) an association applying for a license under 33-17-211;

~~(g) a mechanical breakdown insurance producer;~~

- ~~_____ (h) a prepaid legal plans producer;~~
- ~~_____ (i) a gap insurance producer;~~
- ~~_____ (j) involuntary unemployment insurance producer;~~
- ~~_____ (k) a credit property insurance, credit unemployment insurance, or mortgage guaranty insurance producer; or~~

~~(f)~~ (f) an individual who, within ~~60~~ 90 days of cancellation of a license issued by the state of the individual's residence, files with the commissioner a current letter of clearance certifying that the individual has passed an examination and held an insurance license in good standing in the individual's state of licensure, except that the individual shall take an examination pertaining to this state's law and each kind of insurance for which the individual has applied for a license and that is not covered under the license held in the other state.

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

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

Section 16. Section 33-17-214, MCA, is amended to read:

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

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

(a) life insurance coverage on human lives, including benefits of endowment and annuities, and the coverage may include benefits in the event of death or dismemberment by accident and benefits for disability income;

(b) accident and health or sickness insurance coverage providing for sickness, bodily injury, or accidental death, and the coverage may provide benefits for disability income;

- (c) property insurance coverage for the direct or consequential loss or damage to property of every kind;
 - (d) casualty insurance coverage against legal liability, including liability for death, injury, or disability or damage to real or personal property;
 - (e) variable life and variable annuity products insurance coverage provided under variable life insurance contracts and variable annuities;
 - (f) personal lines of property and casualty insurance coverage sold to individuals and families for primarily noncommercial purposes;
 - (g) limited line credit insurance; or
 - (h) any other line of insurance permitted under Title 33.
- (3) The license must state the name and address of the licensee, personal identification number, date of issuance, general conditions relative to expiration or termination, kind of insurance covered, and other information that the commissioner considers necessary.
- (4) The license of a partnership, corporation, or association must also state the name of each individual authorized to exercise the license powers.
- (5) Each license remains in effect, unless it is suspended, or revoked, or terminated or the license lapses.
- (6) A person shall inform the commissioner in writing of a change of address within 30 days of the change."

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

"33-17-301. Adjuster license -- qualifications -- catastrophe adjustments -- public adjuster. (1) ~~A person~~ An individual may not act as or purport to be an adjuster in this state unless licensed as an adjuster under this chapter. ~~A person~~ An individual shall apply for an adjuster license to the commissioner according to forms that the commissioner prescribes and furnishes. The commissioner shall issue the adjuster license to individuals qualified to be licensed as an adjuster.

- (2) To be licensed as an adjuster, the applicant:
 - (a) must be an individual 18 years of age or more;
 - (b) must be a resident of Montana or resident of another state that will permit residents of Montana regularly to act as adjusters in the other state;
 - (c) ~~must be a full-time salaried employee of a licensed adjuster or a graduate of a recognized law school or have had experience or special education or training as to the handling of loss claims under insurance~~

~~contracts of sufficient duration and extent reasonably to make the applicant competent to fulfill the responsibilities of an adjuster shall pass an adjuster licensing examination as prescribed by the commissioner and pay the fee pursuant to 33-2-708;~~

(d) must be trustworthy and of good character and reputation; and

(e) must have and shall maintain in this state an office accessible to the public and shall keep in the office for not less than 5 years the usual and customary records pertaining to transactions under the license. This provision does not prohibit maintenance of the office in the home of the licensee.

(3) A partnership or corporation, whether or not organized under the laws of this state, may be licensed as an adjuster if each individual who is to exercise the adjuster license powers is separately licensed or is named in the partnership or corporation adjuster license and is qualified for an individual adjuster license.

(4) An adjuster license or qualifications are not required for an adjuster who is sent into this state by and on behalf of an insurer or adjusting partnership or corporation for the purpose of investigating or making adjustments of a particular loss under an insurance policy or for the adjustment of a series of losses resulting from a catastrophe common to all losses.

(5) An adjuster license continues in force until ~~expired~~ lapsed, suspended, revoked, or terminated. ~~The license is subject to renewal upon written request to the commissioner~~ The licensee shall renew the license by the biennial renewal date and pay the appropriate fee or the license will lapse. The biennial fee is established pursuant to 33-2-708.

(6) The commissioner may adopt rules providing for the examination, licensure, bonding, and regulation of public adjusters."

Section 18. 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 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 represents to the public that the person has particular insurance qualifications other than those for which the person may be otherwise licensed or otherwise qualified ~~is guilty of a misdemeanor and upon conviction shall be fined \$1,500~~ may be fined pursuant to 33-1-317.

(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 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~~ may be fined pursuant to 33-1-317.

(3) This part 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 a professional capacity if neither the actuary nor the certified public accountant or 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 19. Section 33-17-503, MCA, is amended to read:

"33-17-503. Application -- fee -- expiration. (1) Before a consultant license is issued or renewed, the prospective licensee shall:

(a) properly file in the office of the commissioner a written application on forms the commissioner prescribes; and

(b) pay a fee of \$50, ~~which the commissioner shall deposit with the state treasurer to be credited to the state's general fund pursuant to 33-2-708.~~

(2) ~~Each consultant license must be renewed each year by the consultant paying a continuation fee on or before May 31, and the license continues in force unless suspended, revoked, or otherwise terminated. A consultant license continues in force until lapsed, suspended, revoked, or terminated.~~"

Section 20. Section 33-17-504, MCA, is amended to read:

"33-17-504. Issuing license -- limitations. The commissioner may issue a consultant license to an individual who has complied with the requirements of this chapter with respect to either life insurance, meaning all of those kinds of insurance authorized in 33-1-207, 33-1-208, 33-20-1001, 33-21-103, 33-22-501, and 33-22-601, or general insurance, meaning all of those kinds of insurance authorized in 33-1-206, 33-1-207, 33-1-209 through 33-1-212, 33-1-214 through 33-1-219, and 33-1-221 through 33-1-229, as specified in the license."

Section 21. Section 33-17-1001, MCA, is amended to read:

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

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

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

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

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

(e) been convicted of a felony;

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

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

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

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

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

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

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

~~(m)(l)~~ 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~~ The commissioner retains the authority to enforce the provisions of and impose any penalty or remedy authorized by

the insurance code against any person who is under investigation for or charged with a violation of the insurance code even if the person's license or registration has been surrendered or has lapsed."

Section 22. Section 33-17-1002, MCA, is amended to read:

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

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

~~(2)~~(3) The commissioner may not again issue a license under this code to a person whose license has been revoked until after expiration of 1 year and ~~thereafter not~~ until the person again qualifies for a license in accordance with this code. If the commissioner revokes a person's license, the commissioner may refuse to issue a license to the person for up to 5 years after the revocation. A person whose license has been revoked twice is not again eligible for any license under this code.

~~(3)~~(4) If the license of a partnership or corporation is suspended or revoked, ~~no~~ a member of the partnership or officer or director of the corporation may not be licensed or be designated in a license to exercise its powers during the period of the suspension or revocation unless the commissioner determines upon substantial evidence that the member, officer, or director was not personally at fault and did not acquiesce in the matter on account of which the license was suspended or revoked."

Section 23. Section 33-17-1203, MCA, is amended to read:

"33-17-1203. Continuing education -- basic requirements -- exceptions. (1) Unless exempt under subsection (4):

(a) a person licensed to act as an insurance producer ~~for property, casualty, surety, or title insurance~~ or as a consultant ~~for general insurance~~ other than a person licensed for limited lines credit insurance shall, during each ~~calendar year~~ 24-month period, complete at least ~~40~~ 24 credit hours of approved continuing education;

~~(b) a person licensed to act as an insurance producer for life or disability insurance or as a consultant~~

~~for life insurance shall, during each calendar year, complete at least 10 credit hours of approved continuing education;~~

~~———— (c) a person holding multiple licenses shall, during each calendar year, complete at least 15 credit hours of approved continuing education;~~

~~(d)(b) a person licensed to act as an insurance producer only for limited lines credit life and disability insurance shall, during each ~~calendar year~~ biennium, complete ~~2-1/2~~ 5 credit hours of approved continuing education in the areas of insurance law, ethics, or ~~credit life and disability~~ limited lines credit insurance;~~

~~(e)(c) a person licensed as an insurance producer or consultant shall, during each biennium, complete at least 1 credit hour of approved continuing education on changes in Montana insurance statutes and administrative rules.~~

(2) If a person licensed as an insurance producer or consultant completes more credit hours of approved continuing education in a ~~year~~ biennium than the minimum required in subsection (1), the excess credit hours may be carried forward and applied to the continuing education requirements of the next ~~year~~ biennium.

(3) The commissioner may, for good cause, grant an extension of time, not to exceed 1 year, during which the requirements imposed by subsection (1) may be completed.

(4) The minimum continuing education requirements do not apply to:

~~(a) a person licensed to sell any kind of insurance for which an examination is not required under 33-17-212(6)(d) through (6)(l);~~

~~———— (b)(a) a person holding a temporary license issued under 33-17-216; or~~

~~(c) a newly licensed insurance producer or consultant during the calendar year in which the licensee first received a license;~~

~~———— (d) a person who only executes surety bail bonds; or~~

~~———— (e)(b) an insurance producer or consultant otherwise exempted by the commissioner."~~

Section 24. Section 33-17-1205, MCA, is amended to read:

"33-17-1205. Compliance -- failure to comply -- rulemaking authority. (1) Each person subject to the requirements of 33-17-1203 shall file ~~annually on a form~~ biennially in a format supplied by the commissioner ~~written~~ certification as to the approved courses, lectures, seminars, and instructional programs successfully completed by that person during the preceding ~~calendar year~~ biennium.

(2) ~~The commissioner may suspend the license of any person failing to comply with subsection (1) who has not been granted an extension under 33-17-1203 and may impose a late renewal fee of \$20, which is the~~

~~same amount previously determined by an administrative rule in effect on November 3, 1998. The suspension must remain in effect until the time that the person demonstrates to the satisfaction of the commissioner that the person has complied with all the provisions of this part. If the license of an insurance producer or consultant is suspended by reason of this section for a period exceeding 12 months, the license must be terminated upon notice to the insurance producer or consultant~~ If a person fails to comply with this section, the person's license lapses.

(3) In the continuing education affidavit, an insurance producer shall report to the commissioner the final disposition of any administrative action or the final disposition of any criminal action taken against the insurance producer in another jurisdiction or by another governmental agency in this state. As used in this subsection, "final disposition of any criminal action" means a plea agreement or sentence and judgment.

~~(3)~~(4) Each person providing approved courses, lectures, seminars, and instructional programs, including insurance company education programs, shall file annually with the commissioner an alphabetical list of the names and addresses of all persons who have successfully completed an approved continuing education activity during the preceding calendar year.

~~(4)~~(5) The commissioner may, following the process provided for in 33-1-314, withdraw approval of all courses, lectures, seminars, and instructional programs of any person that fails to comply with subsection ~~(3)~~ (4). The commissioner may, after having conducted a hearing pursuant to 33-1-701, impose a fine upon a person that has failed to comply with subsection ~~(3)~~ (4). The fine may not exceed the penalty permitted by 33-1-317.

(6) The commissioner may adopt rules establishing the requirements for biennial filing and reporting of continuing education credits."

Section 25. Section 33-17-1207, MCA, is amended to read:

"33-17-1207. Funding for continuing education program. All ~~annual~~ continuing education filing fees collected by the commissioner and fees paid to the commissioner for the review of initial applications for approval of continuing education courses or the periodic review of these courses must be turned over promptly to the state treasurer who shall place the money in the state special revenue fund to the credit of the state auditor's office to be used for the continuing education program. The funds allocated by this section to the state special revenue fund may be used only to defray the expenses of the state auditor's office in discharging its duties as prescribed by this part, subject to the applicable laws relating to the appropriation of state funds and to the deposit and expenditure of state money. The state auditor is responsible for the proper expenditure of this money as provided by law."

NEW SECTION. Section 26. Coordination instruction. If ___ Bill No. ___ [LC 797] and [this act] are passed and approved, then [section 8] of this act, amending 33-2-708, is amended to read:

"Section 8. 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~~ \$100;

(B) ~~annual~~ biennial renewal of license: ~~10.00~~ \$50;

(C) lapsed license reinstatement fee, \$100;

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

~~(ii)~~(iii) surplus lines insurance ~~producer~~ producer's license:

(A) application for original license and for issuance of license, if issued, ~~50.00~~ \$50;

(B) ~~annual~~ biennial renewal of license: ~~50.00~~ \$100;

(C) lapsed license reinstatement fee, \$200;

(iv) insurance adjuster's license:

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

(B) biennial renewal of license, \$100;

(C) lapsed license reinstatement fee, \$200;

(v) insurance consultant's license:

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

(B) biennial renewal of license, \$100;

(C) lapsed license reinstatement fee, \$200;

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

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

(B) quarterly filing fee, \$25;

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

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

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

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

(3) The commissioner shall promptly deposit with the state treasurer to the credit of the general fund all fines and penalties and those amounts received pursuant to 33-2-311, 33-2-705, and 33-28-201. 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."

NEW SECTION. Section 27. Codification instruction. (1) [Sections 1 and 2] are intended to be codified as an integral part of Title 33, chapter 17, and the provisions of Title 33, chapter 17, apply to [sections 1 and 2].

(2) [Section 3] is intended to be codified as an integral part of Title 33, chapter 1, part 2, and the provisions of Title 33, chapter 1, part 2, apply to [section 3].

(3) [Section 4] is intended to be codified as an integral part of Title 33, chapter 26, and the provisions of Title 33, chapter 26, apply to [section 4].

(4) [Section 5] is intended to be codified as an integral part of Title 33, chapter 17, part 4, and the provisions of Title 33, chapter 17, part 4, apply to [section 5].

NEW SECTION. Section 28. Effective date -- applicability. [This act] is effective July 1, 2003, and applies to licenses issued or renewed on or after July 1, 2003.

- END -

