

1 _____ BILL NO. _____

2 INTRODUCED BY _____
3 (Primary Sponsor)

4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING WORKERS' COMPENSATION LAWS BY PLACING THE
5 STATE COMPENSATION INSURANCE FUND UNDER THE AUTHORITY OF THE COMMISSIONER OF
6 INSURANCE; EXEMPTING THE STATE COMPENSATION INSURANCE FUND FROM THE MONTANA
7 ADMINISTRATIVE PROCEDURE ACT AND FROM STATE PRINTING REQUIREMENTS; EXEMPTING THE
8 STATE COMPENSATION INSURANCE FUND FROM LIQUIDATION AND DISSOLUTION PROCEDURES BUT
9 NOT SUPERVISION AND REHABILITATION; REVISING THE DEFINITION OF "INSURER" TO INCLUDE THE
10 STATE COMPENSATION INSURANCE FUND; LIMITING THE TYPES OF TRANSACTIONS BY THE STATE
11 COMPENSATION INSURANCE FUND; EXEMPTING THE STATE COMPENSATION INSURANCE FUND
12 FROM CERTAIN INSURANCE CODE PROVISIONS, INCLUDING CAPITAL REQUIREMENTS AND
13 PARTICIPATION IN THE MONTANA INSURANCE GUARANTY ASSOCIATION; AUTHORIZING THE
14 COMMISSIONER OF INSURANCE TO EVALUATE THE STATE COMPENSATION INSURANCE FUND AS
15 PART OF A COMPETITIVE WORKERS' COMPENSATION MARKET; DEFINING A COMPETITIVE WORKERS'
16 COMPENSATION MARKET; REMOVING A REQUIREMENT THAT STATE AGENCIES PURCHASE
17 WORKERS' COMPENSATION INSURANCE FROM THE STATE COMPENSATION INSURANCE FUND;
18 ASSIGNING TO THE DEPARTMENT OF ADMINISTRATION THE PROCUREMENT RESPONSIBILITIES FOR
19 WORKERS COMPENSATION FOR THE STATE; REQUIRING PREMIUM RATES TO BE SET UNDER THE
20 INSURANCE CODE; REMOVING RULEMAKING AUTHORITY FROM THE STATE COMPENSATION
21 INSURANCE FUND; REDEFINING THE PURPOSE OF THE STATE COMPENSATION INSURANCE FUND;
22 REPEALING THE AUTHORITY OF THE STATE COMPENSATION INSURANCE FUND'S BOARD OF
23 DIRECTORS REGARDING DEVIATIONS FROM ADVISORY ORGANIZATION RECOMMENDATIONS;
24 AMENDING SECTIONS 2-4-102, 18-7-101, 33-1-102, 33-1-201, 33-2-108, 33-2-109, 33-2-1101, 33-2-1303,
25 33-2-1304, 33-2-1321, 33-2-1322, 33-10-101, 33-16-303, 33-16-1002, 33-16-1008, 33-16-1020, 33-16-1035,
26 39-71-403, 39-71-2201, 39-71-2311, 39-71-2312, 39-71-2314, 39-71-2315, 39-71-2316, 39-71-2330,
27 39-71-2336, AND 39-71-2361, MCA; REPEALING SECTION 33-16-1024, MCA; AND PROVIDING AN
28 EFFECTIVE DATE."

29
30 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:



1
2 **NEW SECTION. Section 1. State fund regulation under insurance code.** (1) Except as provided
3 in subsection (2), the state fund shall operate under the provisions of Title 33 that are applicable to insurance
4 companies that issue workers' compensation insurance in this state. The state fund shall also operate under this
5 part.

6 (2) The state fund is not subject to:
7 (a) liquidation or dissolution provisions for an insurer as provided in Title 33, chapter 2, part 13;
8 (b) the requirements of Title 33, chapter 3, regarding domestic stock insurers and domestic mutual
9 insurers;
10 (c) Title 33, chapter 10, part 1, concerning casualty and property insurance guaranty associations; and
11 (d) the requirements of 33-12-104 concerning authorization of investments by the board.
12 (3) If a conflict occurs between Title 33 and this section, this section controls.

13
14 **NEW SECTION. Section 2. Partial exemption.** As a statutorily established state entity, the state
15 workers' compensation fund is exempt from the provisions in this part relating to liquidation or dissolution but
16 is not exempt from supervision or the provisions for rehabilitation not resulting in liquidation or dissolution.
17

18 **Section 3.** Section 2-4-102, MCA, is amended to read:

19 **"2-4-102. Definitions.** For purposes of this chapter, the following definitions apply:

20 (1) "Administrative rule review committee" or "committee" means the appropriate committee assigned
21 subject matter jurisdiction in Title 5, chapter 5, part 2.

22 (2) (a) "Agency" means an agency, as defined in 2-3-102, of the state government, except that the
23 provisions of this chapter do not apply to the following:

24 (i) the state board of pardons and parole, except that the board is subject to the requirements of
25 2-4-103, 2-4-201, 2-4-202, and 2-4-306 and its rules must be published in the ARM and the register;

26 (ii) the supervision and administration of a penal institution with regard to the institutional supervision,
27 custody, control, care, or treatment of youths or prisoners;

28 (iii) the board of regents and the Montana university system;

29 (iv) the state compensation insurance fund provided for in Title 39, chapter 71, part 23;

30 ~~(iv)~~(v) the financing, construction, and maintenance of public works;

1 ~~(v)~~(vi) the public service commission when conducting arbitration proceedings pursuant to 47 U.S.C.
2 252 and 69-3-837.

3 (b) Agency does not include a school district, unit of local government, or any other political subdivision
4 of the state.

5 (3) "ARM" means the Administrative Rules of Montana.

6 (4) "Contested case" means a proceeding before an agency in which a determination of legal rights,
7 duties, or privileges of a party is required by law to be made after an opportunity for hearing. The term includes
8 but is not restricted to ratemaking, price fixing, and licensing.

9 (5) (a) "Interested person" means a person who has expressed to the agency an interest concerning
10 agency actions under this chapter and has requested to be placed on the agency's list of interested persons as
11 to matters of which the person desires to be given notice.

12 (b) The term does not extend to contested cases.

13 (6) "License" includes the whole or part of an agency permit, certificate, approval, registration, charter,
14 or other form of permission required by law but does not include a license required solely for revenue purposes.

15 (7) "Licensing" includes an agency process respecting the grant, denial, renewal, revocation,
16 suspension, annulment, withdrawal, limitation, transfer, or amendment of a license.

17 (8) "Party" means a person named or admitted as a party or properly seeking and entitled as of right
18 to be admitted as a party, but this chapter may not be construed to prevent an agency from admitting any person
19 as a party for limited purposes.

20 (9) "Person" means an individual, partnership, corporation, association, governmental subdivision,
21 agency, or public organization of any character.

22 (10) "Register" means the Montana Administrative Register.

23 (11) (a) "Rule" means each agency regulation, standard, or statement of general applicability that
24 implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice
25 requirements of an agency. The term includes the amendment or repeal of a prior rule.

26 (b) The term does not include:

27 (i) statements concerning only the internal management of an agency or state government and not
28 affecting private rights or procedures available to the public, including rules implementing the state personnel
29 classification plan, the state wage and salary plan, or the statewide budgeting and accounting system;

30 (ii) formal opinions of the attorney general and declaratory rulings issued pursuant to 2-4-501;

1 (iii) rules relating to the use of public works, facilities, streets, and highways when the substance of the
2 rules is indicated to the public by means of signs or signals;

3 (iv) seasonal rules adopted annually or biennially relating to hunting, fishing, and trapping when there
4 is a statutory requirement for the publication of the rules and rules adopted annually or biennially relating to the
5 seasonal recreational use of lands and waters owned or controlled by the state when the substance of the rules
6 is indicated to the public by means of signs or signals; or

7 (v) uniform rules adopted pursuant to interstate compact, except that the rules must be filed in
8 accordance with 2-4-306 and must be published in the ARM.

9 (12) (a) "Significant interest to the public" means agency actions under this chapter regarding matters
10 that the agency knows to be of widespread citizen interest. These matters include issues involving a substantial
11 fiscal impact to or controversy involving a particular class or group of individuals.

12 (b) The term does not extend to contested cases.

13 (13) "Substantive rules" are either:

14 (a) legislative rules, which if adopted in accordance with this chapter and under expressly delegated
15 authority to promulgate rules to implement a statute have the force of law and when not so adopted are invalid;
16 or

17 (b) adjective or interpretive rules, which may be adopted in accordance with this chapter and under
18 express or implied authority to codify an interpretation of a statute. The interpretation lacks the force of law."
19

20 **Section 4.** Section 18-7-101, MCA, is amended to read:

21 **"18-7-101. Power to contract for printing -- ~~exception~~ exemption.** (1) Except as provided in
22 1-11-301, the department has exclusive power, subject to the approval of the governor, to contract for all printing
23 for any purpose used by the state in any state office (elective or appointive), agency, or institution.

24 (2) The department shall supervise and attend to all public printing of the state as provided in this
25 chapter and shall prevent duplication and unnecessary printing.

26 (3) Unless otherwise provided by law, the department, in letting contracts as provided in this chapter,
27 for the printing, binding, and publishing of all laws, journals, and reports of the state agencies and institutions
28 may determine the quantity, quality, style, and grade of all such printing, binding, and publishing.

29 (4) The provisions of this chapter do not apply to the state compensation insurance fund ~~for purposes~~
30 ~~of external marketing or educational materials."~~

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Section 5. 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 for~~ protecting 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 part 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

1 subdivisions of this state in which the political subdivisions undertake to separately or jointly indemnify one
2 another by way of a pooling, joint retention, deductible, or self-insurance plan.

3 (b) This code does not apply to any arrangement, plan, or interlocal agreement between political
4 subdivisions of this state or any arrangement, plan, or program of a single political subdivision of this state in
5 which the political subdivision provides to its officers, elected officials, or employees disability insurance or life
6 insurance through a self-funded program.

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

9 (b) A "service contract" means a contract or agreement for a separately stated consideration for a
10 specific duration to perform the repair, replacement, or maintenance of property or to indemnify for the repair,
11 replacement, or maintenance of property if an operational or structural failure is due to a defect in materials or
12 manufacturing or to normal wear and tear, with or without an additional provision for incidental payment or
13 indemnity under limited circumstances, including but not limited to towing, rental, and emergency road service.
14 A service contract may provide for the repair, replacement, or maintenance of property for damage resulting from
15 power surges or accidental damage from handling. A service contract does not include motor club service as
16 defined in 61-12-301.

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

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

22

23 **Section 6.** Section 33-1-201, MCA, is amended to read:

24 **"33-1-201. Definitions -- insurance in general.** For the purposes of this code, the following definitions
25 apply unless the context requires otherwise:

26 (1) An ~~alien~~ "Alien insurer" is one formed under the laws of any country other than the United States;
27 or its states, districts, territories, and commonwealths.

28 (2) An ~~authorized~~ "Authorized insurer" is one duly authorized by a subsisting certificate of authority
29 issued by the commissioner to transact insurance in this state.

30 (3) A ~~domestic~~ "Domestic insurer" is one incorporated under the laws of this state.

1 (4) A ~~"foreign "~~"Foreign insurer" is one formed under the laws of any jurisdiction other than this state.
 2 Except ~~where that when~~ distinguished by context, a foreign insurer also includes ~~also~~ an alien insurer.

3 (5) (a) "Insurance" ~~is~~ means a contract whereby one undertakes to indemnify another or pay or provide
 4 a specified or determinable amount or benefit upon determinable contingencies.

5 (b) Insurance does not include contracts for the installation, maintenance, and provision of inside
 6 telecommunications wiring to residential or business premises.

7 (6) "Insurer" includes every person engaged as indemnitor, surety, or contractor in the business of
 8 entering into contracts of insurance. The term also includes a health service corporation in the provisions listed
 9 in 33-30-102 and the workers' compensation insurance program known as the state compensation insurance
 10 fund and provided for in Title 39, chapter 71, part 23, and related sections.

11 (7) A ~~"resident "~~"Resident domestic insurer" is an insurer incorporated under the laws of this state and:

12 (a) if a mutual company, not less than one-half of the policyholders are ~~natural persons~~ individuals who
 13 are residents of this state; or

14 (b) if a stock insurer, not less than one-half of the shares are owned by ~~natural persons~~ individuals who
 15 are residents of this state and all of the directors and officers of the insurer are residents of this state.

16 (8) "State", when used relating to jurisdiction, means a state, the District of Columbia, or a territory,
 17 commonwealth, or possession of the United States.

18 (9) "Transact", with respect to insurance, includes any of the following:

19 (a) solicitation and inducement;

20 (b) preliminary negotiations;

21 (c) effectuation of a contract of insurance;

22 (d) transaction of matters subsequent to effectuation of the contract of insurance and arising out of it.

23 (10) A ~~"unauthorized "~~"Unauthorized insurer" is one not authorized by a subsisting certificate of authority
 24 issued by the commissioner to transact insurance in this state."

25

26 **Section 7.** Section 33-2-108, MCA, is amended to read:

27 **"33-2-108. Combinations of insuring powers.** (1) Except as provided in subsections (2), ~~(3), and (4)~~
 28 through (5) and 33-25-213, an insurer ~~which that~~ otherwise qualifies ~~therefor~~ may be authorized to transact any
 29 one kind or combination of kinds of insurance as defined in 33-1-205 through 33-1-212.

30 (2) (a) A Except as provided in subsection (2)(b), a life insurer may ~~also~~ grant annuities but ~~shall~~ may

1 not be authorized to transact any other kind of insurance other than disability, ~~except that if,~~

2 (b) If the insurer is otherwise qualified ~~therefor~~, the commissioner shall continue to ~~so~~ authorize any life
 3 insurer ~~which,~~ that immediately prior to January 1, 1961, was lawfully authorized to transact in this state ~~a~~ any
 4 kind ~~or kinds~~ of insurance in addition to life and disability.

5 (3) A reciprocal insurer ~~shall~~ may not transact life insurance.

6 (4) A title insurer ~~shall~~ must be a stock insurer.

7 (5) The state compensation insurance fund is authorized to transact only workers' compensation
 8 insurance and related coverages."

9

10 **Section 8.** Section 33-2-109, MCA, is amended to read:

11 **"33-2-109. Capital or surplus funds required.** (1) ~~(a) To~~ Except as provided in subsections (3) through
 12 (5), to qualify for authority to transact any one kind of insurance, as defined in 33-1-205 through 33-1-212, or
 13 combinations of kinds of insurance as shown ~~below~~ in subsection (1)(b), an insurer ~~shall~~ is required to possess
 14 and maintain unimpaired paid-in capital stock, if a stock insurer, or surplus, if a mutual or foreign reciprocal
 15 insurer, in an amount not less than is applicable under the schedules ~~below~~ in subsection (1)(b) and ~~shall~~ is
 16 required to possess when first authorized to transact insurance any additional funds as surplus as required under
 17 33-2-110:

18 ~~_____ (a).~~

19 (b) The following minimum capital or surplus is required for each kind of insurance:

Kind or kinds of insurance	Minimum capital or surplus required
Life	\$200,000
Disability	200,000
Life and disability	300,000
Credit life and disability	50,000
Property	400,000
Marine	400,000
Casualty	
_____ All lines, except workers' compensation	400,000
_____ All lines, including workers' compensation	600,000

1	Surety	500,000
2	Title	200,000
3	Multiple lines, two or more of property, marine, casualty, or surety	800,000
4	(b) For insurers licensed on or after October 1, 1999:	
5	Kind or kinds	Minimum capital or
6	of insurance	surplus required
7	Life	\$600,000
8	Disability	500,000
9	Life and disability	750,000
10	Credit life and disability	150,000
11	Property	500,000
12	Marine	500,000
13	Casualty	
14	All lines, except workers' compensation	500,000
15	All lines, including workers' compensation	750,000
16	Surety	500,000
17	Title	500,000
18	Multiple lines, two or more of property, marine, casualty, or surety	1,000,000

19 ~~(2) Surplus requirements for qualification to transact one or more kinds of insurance for domestic mutual~~
 20 ~~insurers are governed by Title 33, chapter 3, and surplus requirements for domestic reciprocal insurers are~~
 21 ~~governed by Title 33, chapter 5.~~

22 ~~(2)~~ Capital and surplus requirements must be based upon all the kinds of insurance actually
 23 transacted or to be transacted by the insurer in any areas in which it operates, whether or not only a portion of
 24 the kinds are any kind is to be transacted in this state.

25 (3) (a) Surplus requirements for qualifications to transact one or more kinds of insurance for domestic
 26 mutual insurers and domestic stock insurers are governed by Title 33, chapter 3.

27 (b) Surplus requirements for domestic reciprocal insurers are governed by Title 33, chapter 5.

28 (c) Surplus requirements for the state compensation insurance fund are governed by 39-71-2330.

29 (4) A life insurer may also grant annuities without additional capital or additional surplus.

30 (5) For a credit life and disability insurer that is not a resident domestic insurer as defined in 33-1-201

1 and 33-1-202, the capital or surplus required by this section is an amount equal to four times the minimum
 2 capital or surplus required for credit life and disability pursuant to subsection (1)."

3

4 **Section 9.** Section 33-2-1101, MCA, is amended to read:

5 **"33-2-1101. Definitions.** As used in this part, ~~the following terms shall have the respective meanings~~
 6 ~~hereinafter set forth~~, unless the context ~~shall otherwise require~~ requires, the following definitions apply:

7 (1) ~~An "affiliate"~~ "Affiliate" of or person "affiliated" with a specific person ~~is means~~ a person that directly,
 8 or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the
 9 person specified.

10 (2) ~~The term "control"~~ "Control", (including the terms "controlling", "controlled by", and "under common
 11 control with"), ~~means~~ the possession, direct or indirect, of the power to direct or cause the direction of the
 12 management and policies of a person, whether through the ownership of voting securities, by contract other than
 13 a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an
 14 official position with or corporate office held by the person. Control ~~shall be~~ is presumed to exist if any person,
 15 directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing 10% or more
 16 of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner
 17 provided by 33-2-1112 that control does not exist in fact. The commissioner may determine, after furnishing all
 18 persons in interest notice and opportunity to be heard and making specific findings of fact to support ~~such a~~
 19 determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

20 (3) ~~An "insurance~~ "Insurance holding company system" consists of two or more affiliated persons, one
 21 or more of which is an insurer.

22 (4) (a) ~~The term "insurer" shall have~~ "Insurer" has the same meaning as set forth provided in 33-1-201,
 23 except that ~~it shall~~ insurer does not include agencies, authorities, or instrumentalities of the United States, its
 24 possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political
 25 subdivision of a state.

26 (b) The term does not include the state compensation insurance fund.

27 (5) (a) ~~A "person"~~ "Person" is an individual, a corporation, a partnership, an association, a joint-stock
 28 company, a trust, an unincorporated organization, any similar entity, or any combination of the foregoing acting
 29 in concert ~~but shall~~.

30 (b) The term does not include any securities broker performing no more than the usual and customary

1 broker's function.

2 (6) A ~~"securityholder"~~ "Securityholder" of a specified person is one who owns any security of ~~such the~~
3 person, including common stock, preferred stock, debt obligations, and any other security convertible into or
4 evidencing the right to acquire any ~~of the foregoing~~ common stock, preferred stock, debt obligations, or other
5 convertible security.

6 (7) A ~~"subsidiary"~~ "Subsidiary" of a specified person is an affiliate controlled by ~~such the~~ person directly
7 or indirectly through one or more intermediaries.

8 (8) ~~The term "voting~~ "Voting security" ~~shall include~~ includes any security convertible into or evidencing
9 a right to acquire a voting security."
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10

11 **Section 10.** Section 33-2-1303, MCA, is amended to read:

12 **"33-2-1303. Definitions.** For the purposes of this part, the following definitions apply:

13 (1) "Ancillary state" means any state other than a domiciliary state.

14 (2) "Commissioner" means the commissioner of insurance of this state.

15 (3) "Creditor" is a person having any claim, whether matured or unmatured, liquidated or unliquidated,
16 secured or unsecured, absolute, fixed, or contingent.

17 (4) "Delinquency proceeding" means any proceeding instituted against an insurer for the purpose of
18 liquidating, rehabilitating, reorganizing, or conserving ~~such the~~ insurer and any summary proceeding under
19 33-2-1321 or 33-2-1322. "Formal delinquency proceeding" means any liquidation or rehabilitation proceeding.

20 (5) "Doing business" includes any of the following acts, whether effected by mail or otherwise:

21 (a) the issuance or delivery of contracts of insurance to persons resident in this state;

22 (b) the solicitation of applications for ~~such~~ contracts or other negotiations preliminary to the execution
23 of ~~such the~~ contracts;

24 (c) the collection of premiums, membership fees, assessments, or other consideration for ~~such the~~
25 contracts;

26 (d) the transaction of matters subsequent to execution of ~~such the~~ contracts and arising out of ~~them the~~
27 contracts; or

28 (e) operating as an insurer under a license or certificate of authority, ~~as an insurer~~, issued by the
29 commissioner.

30 (6) "Domiciliary state" means the state in which an insurer is incorporated or organized or, in the case

1 of an alien insurer, its state of entry.

2 (7) "Fair consideration" is given for property or obligation:

3 (a) when in exchange for ~~such~~ the property or obligation, as a fair equivalent ~~therefor~~ for the property
4 or obligation and in good faith, property is conveyed or services are rendered or an obligation is incurred or an
5 antecedent debt is satisfied; or

6 (b) when ~~such~~ the property or obligation is received in good faith to secure a present advance or
7 antecedent debt in amount not disproportionately small as compared to the value of the property or obligation
8 obtained.

9 (8) "Foreign country" means any other jurisdiction not in any state.

10 (9) "General assets" means all property, real, personal, or otherwise, not specifically mortgaged,
11 pledged, deposited, or otherwise encumbered for the security or benefit of specified persons or classes of
12 persons. As to specifically encumbered property, "general assets" includes all ~~such~~ property or its proceeds in
13 excess of the amount necessary to discharge the sum or sums secured ~~thereby~~ by the property. Assets held in
14 trust and on deposit for the security or benefit of all policyholders or all policyholders and creditors; in more than
15 a single state; ~~shall~~ must be treated as general assets.

16 (10) "Guaranty association" means the Montana insurance guaranty association, the workers'
17 compensation security fund, the Montana life and health insurance guaranty association, and any other similar
18 entity ~~now or hereafter~~ created by the legislature of this state for the payment of claims of insolvent insurers.

19 "Foreign guaranty association" means any similar ~~entities now in existence in or hereafter~~ entity created by the
20 legislature of any other state.

21 (11) (a) "Insolvency" or "insolvent" means:

22 (i) for an insurer issuing only assessable fire insurance policies, the inability to pay any obligation within
23 30 days after it becomes payable; or

24 (ii) for any other insurer, the inability to pay its obligations when they are due or when its admitted assets
25 do not exceed its liabilities plus the greater of:

26 (A) any capital and surplus required by law for its organization; or

27 (B) the total par or stated value of its authorized and issued capital stock;

28 ~~—— (iii) as to any insurer licensed to do business in this state as of July 1, 1979, which does not meet the~~
29 ~~standard established under subsection (11)(a)(ii), for a period not to exceed 3 years from July 1, 1979, the~~
30 ~~inability to pay its obligations when they are due or that its admitted assets do not exceed its liabilities plus any~~

1 ~~required capital contribution ordered by the commissioner under provisions of the insurance law.~~

2 (b) For purposes of this subsection (11), "liabilities" include but are not limited to reserves required by
3 statute or by the commissioner upon a subject company at the time of admission or subsequent ~~thereto~~ to
4 admission.

5 (12) "Insurer" means any person who has done, purports to do, is doing, or is licensed to do insurance
6 business and is or has been subject to the authority of or to liquidation, rehabilitation, reorganization, supervision,
7 or conservation by any insurance commissioner. Any other persons included under 33-2-1304 are considered
8 to be insurers, including the state compensation insurance fund for all purposes except liquidation and
9 dissolution proceedings.

10 (13) "Preferred claim" means any claim with respect to which the terms of this part accord priority of
11 payment from the general assets of the insurer.

12 (14) "Receiver" means receiver, liquidator, rehabilitator, or conservator as the context requires.

13 (15) "Reciprocal state" means any state other than this state in which in substance and effect
14 33-2-1342(1), 33-2-1381, 33-2-1382, and 33-2-1384 through 33-2-1386 are in force and in which provisions are
15 in force requiring that the commissioner or equivalent official be the receiver of a delinquent insurer and in which
16 some provision exists for the avoidance of fraudulent conveyances and preferential transfers.

17 (16) (a) "Secured claim" means any claim secured by mortgage, trust deed, pledge, deposit as security,
18 escrow, or otherwise, ~~but not including special deposit claims or claims against general assets~~. The term also
19 includes claims ~~which~~ that have become liens upon specific assets by reason of judicial process.

20 (b) The term does not include special deposit claims or claims against general assets.

21 (17) (a) "Special deposit claim" means any claim secured by a deposit made pursuant to statute for the
22 security or benefit of a limited class of persons; ~~but not including~~.

23 (b) The term does not include any claim secured by general assets.

24 (18) "State" means any state, district, or territory of the United States.

25 (19) "Transfer" includes the sale and every other mode, direct or indirect, of disposing of or parting with
26 property or with an interest ~~therein~~ in property or with the possession ~~thereof~~ of property or fixing a lien upon
27 property or upon an interest ~~therein~~ in property, absolutely or conditionally, voluntarily, by or without judicial
28 proceedings. The retention of a security title to property delivered to a debtor is considered a transfer suffered
29 by the debtor."
30

1 **Section 11.** Section 33-2-1304, MCA, is amended to read:

2 **"33-2-1304. To whom proceedings may be applied.** ~~(1) The~~ Except as provided in subsection (2),
3 the proceedings authorized by this part may be applied to:

4 ~~(+)~~(a) all insurers who are doing or have done insurance business in this state and against whom claims
5 arising from that business may exist now or in the future;

6 ~~(2)~~(b) all insurers who purport to do an insurance business in this state;

7 ~~(3)~~(c) all insurers who have insureds resident in this state;

8 ~~(4)~~(d) all other persons organized or in the process of organizing with the intent to do an insurance
9 business in this state;

10 ~~(5)~~(e) all nonprofit service plans and all fraternal benefit societies and beneficial societies; or

11 ~~(6)~~(f) all title insurance companies.

12 (2) The state compensation insurance fund is exempt from dissolution and liquidation proceedings."

13

14 **Section 12.** Section 33-2-1321, MCA, is amended to read:

15 **"33-2-1321. Commissioner's summary orders and supervision proceedings.** (1) (a) Whenever the
16 commissioner determines, after a hearing held under subsection (5), that any domestic insurer has committed
17 or engaged in or is about to commit or engage in any act, practice, or transaction that would subject it to
18 delinquency proceedings under this part, ~~he~~ the commissioner may make and serve upon the insurer and any
19 other persons involved ~~such~~ any orders ~~as~~ that are reasonably necessary to correct or eliminate ~~such~~ the
20 conduct.

21 (b) For the purposes of this section, "domestic insurer" includes the state compensation insurance fund
22 unless otherwise specified.

23 (2) If upon examination or at any other time the commissioner determines that any domestic insurer is
24 in ~~such~~ a condition ~~as to render~~ that renders the continuance of its business hazardous to the public or to holders
25 of its policies or certificates of insurance or if ~~such~~ the domestic insurer gives its consent, ~~then~~ the commissioner
26 shall notify the insurer of ~~his~~ the determination and furnish to the insurer a written list of the commissioner's
27 requirements to abate ~~his~~ the determination.

28 (3) If the commissioner makes a determination to supervise an insurer subject to an order under
29 subsection (1) or (2), ~~he~~ the commissioner shall notify the insurer that it is under the supervision of the
30 commissioner. During the period of supervision, the commissioner may appoint a supervisor to supervise ~~such~~

1 the insurer. The order appointing a supervisor ~~shall~~ must direct the supervisor to enforce orders issued under
 2 subsections (1) and (2) and may also require that the insurer may not do any of the following ~~things~~ during the
 3 period of supervision without the prior approval of the commissioner or the supervisor:

- 4 (a) dispose of, convey, or encumber any of its assets or its business in force;
- 5 (b) withdraw from any of its bank accounts;
- 6 (c) lend any of its funds;
- 7 (d) invest any of its funds;
- 8 (e) incur any debt, obligation, or liability;
- 9 (f) merge or consolidate with another company; or
- 10 (g) enter into any new reinsurance contract or treaty.

11 (4) Any insurer subject to an order under this section shall comply with the lawful requirements of the
 12 commissioner and, if placed under supervision, has 60 days from the date the supervision order is served within
 13 which to comply with the requirements of the commissioner. ~~If the insurer~~ If an insurer other than the state
 14 compensation insurance fund fails to comply within that time, the commissioner may institute proceedings under
 15 33-2-1331 or 33-2-1341 to have a rehabilitator or liquidator appointed or extend the period of supervision. For
 16 failure by the state compensation fund to comply with the supervisory requirements, the commissioner may take
 17 action under 33-2-1331 or seek a resolution through a court proceeding.

18 (5) The notice of hearing under subsection (1) and any order issued pursuant to ~~such~~ subsection (1)
 19 ~~shall~~ must be served upon the insurer pursuant to the applicable rules of civil or administrative procedure. The
 20 notice of hearing ~~shall~~ must state the time and place of the hearing and the conduct, condition, or ground upon
 21 which the commissioner would base ~~his~~ an order. Unless mutually agreed between the commissioner and the
 22 insurer, the hearing ~~shall~~ must occur not less than 10 days or more than 30 days after notice is served and ~~shall~~
 23 must be either in Lewis and Clark County or in some other place convenient to the parties to be designated by
 24 the commissioner. The commissioner shall hold all hearings under subsection (1) privately unless the insurer
 25 requests a public hearing, in which case the hearing ~~shall~~ must be public.

26 (6) (a) Any insurer subject to an order under subsection (2) may request a hearing to review that order.
 27 ~~Such a~~ The hearing ~~shall~~ must be held as provided in subsection (5), but the request for a hearing ~~shall~~ does
 28 not stay the effect of the order.

29 (b) If the commissioner issues an order under subsection (2), the insurer may, at any time, waive a
 30 commissioner's hearing and apply for immediate judicial relief by means of any remedy afforded by law without

1 first exhausting administrative remedies. Subsequent to a hearing, any party to the proceedings whose interests
2 are substantially affected ~~shall be~~ is entitled to judicial review of any order issued by the commissioner.

3 (7) During the period of supervision the insurer may request that the commissioner ~~to~~ review an action
4 taken or proposed to be taken by the supervisor, specifying ~~wherein~~ the action ~~complained of~~ that is believed
5 not to be in the best interest of the insurer.

6 (8) ~~If any~~ Any person ~~has violated~~ violating any supervision order issued under this section ~~which as~~
7 ~~to him was then still in effect,~~ he is subject to a civil penalty imposed by the district court not to exceed \$10,000.

8 (9) The commissioner may apply for and any court of general jurisdiction may grant ~~such~~ restraining
9 orders, preliminary and permanent injunctions, and other orders ~~as~~ that may be necessary to enforce a
10 supervision order.

11 (10) ~~If any~~ a person subject to the provisions of this part, including any person described in 33-2-1310(1),
12 knowingly violates any valid order of the commissioner issued under the provisions of this section and, as a
13 result of ~~such~~ that violation, the net worth of the insurer is reduced or the insurer suffers loss it would not
14 otherwise have suffered, ~~said~~ that person is personally liable to the insurer for the amount of ~~any such~~ the
15 reduction or loss suffered. The commissioner or supervisor is authorized to bring an action on behalf of the
16 insurer in the district court to recover the amount of the reduction or loss together with any costs."

17

18 **Section 13.** Section 33-2-1322, MCA, is amended to read:

19 **"33-2-1322. Court's seizure order.** (1) ~~The~~ Except as provided in subsection (7), the commissioner
20 may file in a district court of this state a petition alleging, with respect to a domestic insurer:

21 (a) that there exist grounds that would justify a court order for a formal delinquency proceeding against
22 an insurer under this part;

23 (b) that the interests of policyholders, creditors, or the public will be endangered by delay; and

24 (c) the contents of an order considered necessary by the commissioner.

25 (2) Upon a filing under subsection (1), the court may issue ~~forthwith,~~ forthwith, ex parte and without a hearing,
26 the requested order ~~which shall direct,~~ directing the commissioner to take possession and control of all or a part
27 of the property, books, accounts, documents, and other records of an insurer and of the premises occupied by
28 it for transaction of its business and until further order of the court enjoin the insurer and its officers, managers,
29 insurance producers, and employees from disposition of its property and from transaction of its business except
30 with the written consent of the commissioner.

1 (3) The court shall specify in the order ~~what its~~ the duration shall be, ~~which shall be such of the order,~~
 2 which must provide the time as that the court considers necessary for the commissioner to ascertain the
 3 condition of the insurer. On motion of either party or on its own motion, the court may from time to time hold ~~such~~
 4 any hearings ~~as it considers desirable~~ considered necessary after ~~such notice as it considers~~ providing
 5 appropriate ~~and~~ notice. The court may extend, shorten, or modify the terms of the seizure order. The court shall
 6 vacate the seizure order if the commissioner fails to commence a formal proceeding under this part after having
 7 had a reasonable opportunity to do so. An order of the court pursuant to a formal proceeding under this part shall
 8 ~~ipso facto vacate~~ vacates the seizure order.

9 (4) Entry of a seizure order under this section shall is not ~~constitute~~ an anticipatory breach of any
 10 contract of the insurer.

11 (5) An insurer subject to an ex parte order under this section may petition the court at any time after the
 12 issuance of ~~such an~~ an order for a hearing and a review of the order. The court shall hold ~~such~~ a hearing and a
 13 review not more than 15 days after the request. A hearing under this subsection may be held privately in
 14 chambers, ~~and it shall be so held if.~~ A hearing must be held privately in chambers if requested by the insurer
 15 proceeded against so requests subject to the ex parte order.

16 (6) If, at any time after the issuance of ~~such an~~ an ex parte order, it appears to the court that any person
 17 whose interest is or will be substantially affected by the order did not appear at the hearing and has not been
 18 served, the court may order that notice be given. An order ~~that to give~~ notice be given shall does not stay the
 19 effect of any order previously issued by the court.

20 (7) The state compensation insurance fund is not subject to the provisions of this section."
 21

22 **Section 14.** Section 33-10-101, MCA, is amended to read:

23 **"33-10-101. Short title, purpose, scope, and construction.** (1) This part shall may be known and may
 24 be cited as the "Montana Insurance Guaranty Association Act".

25 (2) The purpose of this part is to provide a mechanism for the payment of covered claims under certain
 26 insurance policies to avoid excessive delay in payment and to avoid financial loss to claimants or policyholders
 27 because of the insolvency of an insurer, to assist in the detection and prevention of insurer insolvencies, and
 28 to provide an association to assess the cost of ~~such the~~ the protection among insurers.

29 (3) This part shall ~~apply~~ applies to all kinds of direct insurance, except life, title, surety, disability, credit,
 30 mortgage guaranty, ~~and~~ ocean marine insurance, and workers' compensation insurance written by the state

1 compensation insurance fund.

2 (4) This part ~~shall~~ must be liberally construed to effect the purpose under subsection (2) ~~which shall~~
3 ~~constitute.~~ Subsection (2) may be used as an aid and guide to interpretation."

4

5 **Section 15.** Section 33-16-303, MCA, is amended to read:

6 **"33-16-303. Use of rates, rating systems, underwriting rules, and policy or bond forms of rating**
7 **or advisory organizations -- agreements to adhere to.** (1) Members and subscribers of rating or advisory
8 organizations may use the rates, rating systems, underwriting rules, or policy or bond forms of those
9 organizations, either consistently or intermittently, but, except as provided in 33-16-105, 33-16-302, 33-16-305,
10 33-16-307, 33-16-1008, ~~and~~ 33-16-1020 through 33-16-1023, and 33-16-1025 through 33-16-1036, may not
11 agree with each other or rating organizations or others to adhere to the organizations' rates, systems, rules, or
12 policy or bond forms.

13 (2) The fact that two or more admitted insurers, whether or not members or subscribers of a rating or
14 advisory organization, use, either consistently or intermittently, the rates or rating systems made or adopted by
15 a rating organization or the underwriting rules or policy or bond forms prepared by a rating or advisory
16 organization is not sufficient in itself to support a finding that an agreement prohibited under subsection (1) exists
17 and may be used only for the purpose of supplementing or explaining direct evidence of the existence of any
18 agreement."

19

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

21 **"33-16-1002. Applicability of part.** (1) This part, together and in conjunction with parts 1 through 4 of
22 this chapter, applies to the making of premium rates for:

23 (a) workers' compensation insurance issued under compensation plan No. 2 of the Workers'
24 Compensation Act, Title 39, chapter 71, part 22, or compensation plan No. 3 of the Workers' Compensation Act,
25 Title 39, chapter 71, part 23, unless otherwise specified; and

26 (b) related employer's liability insurance, ~~but,~~

27 (2) This part, together and in conjunction with parts 1 through 4 of this chapter, does not apply to
28 reinsurance."

29

30 **Section 17.** Section 33-16-1008, MCA, is amended to read:

1 **"33-16-1008. Definitions.** As used in this part, the following definitions apply:

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

5 (2) (a) "Advisory organization" means a person or organization that either has two or more member
6 insurers or is controlled either directly or indirectly by two or more insurers and that assists insurers in
7 ratemaking-related activities. As used in this subsection (2)(a), two or more insurers who have a common
8 ownership or operate in this state under common management or control constitute a single insurer.

9 (b) ~~The term does not include a joint underwriting association, any actuarial or legal consultant, or any~~
10 ~~employee of an insurer or insurers under common control or management or their employees or manager. As~~
11 ~~used in this subsection, two or more insurers who have a common ownership or operate in this state under~~
12 ~~common management or control constitute a single insurer.~~

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

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

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

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

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

29 (8) "Insurer" means a person licensed to write workers' compensation insurance, as provided in Title
30 39, chapters 71 and 72, as a plan No. 2 insurer or a plan No. 3 insurer under the laws of the state.

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

3 (10) "Market" means the interaction in this state between buyers and ~~plan No. 2 sellers of~~ insurers
4 providing workers' compensation and employer's liability insurance pursuant to the provisions of this part.

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

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

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

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

16 (b) The term does not include minimum premiums.

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

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

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

24 (17) "Supporting information" means the experience and judgment of the filer and the experience or data
25 of other insurers or advisory organizations relied on by the filer, the interpretation of any statistical data relied
26 on by the filer, descriptions of methods used in making the rates, and any other similar information required to
27 be filed by the commissioner."
28

29 **Section 18.** Section 33-16-1020, MCA, is amended to read:

30 **"33-16-1020. Competitive market -- hearing.** (1) A competitive market is presumed to exist unless the

1 commissioner, after hearing, issues an order stating that a reasonable degree of competition does not exist in
2 the market. The order may not expire later than 1 year after issuance.

3 (2) In determining whether a reasonable degree of competition exists, the commissioner shall consider
4 the following factors:

5 (a) the number of insurers actively engaged in providing coverage;

6 (b) market shares and changes in market shares;

7 (c) ease of entry into the market;

8 (d) market concentration among plan No. 2 and plan No. 3 insurers as measured by the
9 Herfindahl-Hirschman index;

10 (e) whether long-term profitability for insurers in the market is unreasonably high in relation to the risks
11 being insured;

12 (f) whether long-term profitability for insurers in the market is reasonable in relation to industries of
13 comparable business risks; and

14 (g) generally accepted and relevant tests relating to competitive market structure, market performance,
15 and market conduct.

16 (3) The workers' compensation insurance market may not be determined to be noncompetitive if the
17 market concentration of the state's plan No. 3 insurer and the 50 largest insurers writing workers' compensation
18 insurance under plan No. 2 satisfied the U.S. department of justice merger guidelines for an unconcentrated
19 market.

20 (4) The commissioner's determinations must be made on the basis of findings of fact and conclusions
21 of law."

22

23 **Section 19.** Section 33-16-1035, MCA, is amended to read:

24 **"33-16-1035. Penalties -- suspension of license.** (1) The commissioner may impose upon a person
25 or organization that violates 33-16-1020 through 33-16-1023 and 33-16-1025 through 33-16-1036 a penalty of
26 not more than \$500 for each violation.

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

29 (3) The commissioner may suspend the license of an insurer or an advisory organization that fails to
30 comply with any order within the time set by the order or extension granted by the commissioner. The

1 commissioner may not suspend a license for failure to comply with an order until the time prescribed for appeal
 2 from the order has expired or, if appealed, until the order has been affirmed. The commissioner may determine
 3 the period of a suspension, which remains in effect for the period unless modified or rescinded or until the order
 4 upon which the suspension is based is modified, rescinded, or reversed.

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

9 (5) A party aggrieved by an order or decision of the commissioner may, within 30 days after receiving
 10 the commissioner's notice, make a written request for a hearing."
 11

12 **Section 20.** Section 39-71-403, MCA, is amended to read:

13 **"39-71-403. ~~Plan three exclusive for state agencies -- election~~ Election of plan by state agency**
 14 **and public corporations -- financing of self-insurance fund -- exemption for university system -- public**
 15 **corporation definition defined.** (1) (a) Except as provided in ~~subsection (5)~~ for public corporations in
 16 subsections (2) through (4), if a state agency is the employer, the agency shall submit to the department of
 17 administration the terms, conditions, and provisions of for a compensation plan under plan No. 1, plan No. 2,
 18 or plan No. 3, state fund,

19 (b) (i) The department of administration shall procure workers' compensation insurance services for the
 20 benefit of state agencies under the terms of Title 18, chapter 4, using a method that is in the best interest of the
 21 state.

22 (ii) The department shall provide the terms for each state contract to the governor's office for budgeting
 23 purposes.

24 (iii) If more than one contract has similar terms, conditions, and provisions, the department of
 25 administration may combine more than one contract into one contract to achieve economies of scale.

26 (c) The terms, conditions, and provisions of an agency workers' compensation contract are exclusive,
 27 compulsory, and obligatory upon both employer and employee.

28 (d) Any sums necessary to be paid under the provisions of this chapter by a state agency are considered
 29 to be ordinary and necessary expenses of the agency. The agency shall ~~make request~~ request appropriation of and pay
 30 the appropriated sums into the state fund for the compensation plan at the time and in the manner provided for

1 in this chapter, ~~notwithstanding that the state agency may have failed to anticipate the ordinary and necessary~~
 2 ~~expense in a budget, estimate of expenses, appropriations, ordinances, or otherwise.~~

3 (2) A public corporation, ~~other than a state agency,~~ may elect coverage under compensation plan No.
 4 1, plan No. 2, or plan No. 3, separately or jointly with any other public corporation, ~~other than a state agency.~~ A
 5 public corporation electing compensation plan No. 1 may purchase reinsurance or issue bonds or notes pursuant
 6 to subsection (3)(b). A public corporation electing coverage under compensation plan No. 1 is subject to the
 7 same provisions as a private employer electing compensation plan No. 1.

8 (3) (a) A public corporation, ~~other than a state agency,~~ that elects coverage under plan No. 1 may
 9 establish a fund sufficient to pay the compensation and benefits provided for in chapter 72 and this chapter and
 10 to discharge all liabilities that are reasonably incurred during the fiscal year for which the election is effective.
 11 Proceeds from the fund must be used only to pay claims covered by chapter 72 and this chapter and for actual
 12 and necessary expenses required for the efficient administration of the fund, including debt service on any bonds
 13 and notes issued pursuant to subsection (3)(b).

14 (b) (i) A public corporation, ~~other than a state agency,~~ entitled to issue and sell bonds and notes may
 15 issue and sell its bonds and notes, separately or jointly with another public corporation, ~~other than a state~~
 16 ~~agency, may issue and sell its bonds and notes~~ entitled to issue and sell bonds and notes, for the purpose of
 17 establishing, in whole or in part, the self-insurance workers' compensation fund provided for in subsection (3)(a)
 18 and to pay the costs associated with the sale and issuance of the bonds. Bonds and notes may be issued in an
 19 amount not exceeding 0.18% of the total assessed value of taxable property, determined as provided in
 20 15-8-111, of the public corporation as of the date of issue. The bonds and notes must be authorized by resolution
 21 of the governing body of the public corporation and are payable from an annual property tax levied in the amount
 22 necessary to pay principal and interest on the bonds or notes. This authority to levy an annual property tax exists
 23 despite any provision of law or maximum levy limitation, including 15-10-420, to the contrary. The revenue
 24 derived from the sale of the bonds and notes may not be used for any other purpose.

25 (ii) The bonds and notes:

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

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

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

29 (iii) Two or more public corporations, ~~other than state agencies,~~ entitled to issue and sell bonds and
 30 notes may agree to exercise their respective borrowing powers jointly under this subsection (3)(b) or may

1 authorize a joint board or the department of administration to exercise the powers on their behalf.

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

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

12 ~~(5) The provisions of subsection (1) do not apply to the Montana university system.~~

13 ~~(6)(5)~~ As used in ~~subsections (2) through (4)~~ this section, "public corporation" includes the Montana
14 university system."
15

16 **Section 21.** Section 39-71-2201, MCA, is amended to read:

17 **"39-71-2201. Election to be bound by plan.** (1) Any employer ~~except those specified in 39-71-403~~
18 may, by filing ~~his~~ an election to become bound by compensation plan No. 2, insure ~~his~~ against the workers'
19 compensation liability ~~to pay the~~ for compensation and benefits provided by this chapter with any insurance
20 company authorized to transact ~~such business~~ workers' compensation insurance in this state.

21 (2) Any employer electing to become bound by compensation plan No. 2 shall make ~~his~~ an election on
22 the form and in the manner prescribed by the department."
23

24 **Section 22.** Section 39-71-2311, MCA, is amended to read:

25 **"39-71-2311. Intent and purpose of plan -- ~~expense constant defined competitive market.~~** (1) It
26 is the intent and purpose of the state fund to allow employers an option to insure their liability for workers'
27 compensation and occupational disease coverage with the state fund. The state fund must be neither more nor
28 less than self-supporting. ~~Premium rates must be set at least annually at a level sufficient to ensure the adequate~~
29 ~~funding of the insurance program, including the costs of administration, benefits, and adequate reserves, during~~
30 ~~and at the end of the period for which the rates will be in effect. In determining premium rates, the state fund~~

1 shall make every effort to adequately predict future costs. When the costs of a factor influencing rates are
 2 unclear and difficult to predict, the state fund shall use a prediction calculated to be more than likely to cover
 3 those costs rather than less than likely to cover those costs. Unnecessary surpluses that are created by the
 4 imposition of premiums found to have been set higher than necessary because of a high estimate of the cost
 5 of a factor or factors may be refunded by the declaration of a dividend as provided in this part. For the purpose
 6 of keeping the state fund solvent, the board of directors may implement multiple rating tiers as provided in
 7 39-71-2330 and may assess an expense constant, a minimum premium, or both.

8 ~~—— (2) As used in this section, "expense constant" means a premium charge applied to each workers'~~
 9 ~~compensation policy to pay expenses related to issuing, servicing, maintaining, recording, and auditing the~~
 10 ~~policy:~~

11 (2) Premium rates and classifications must be set pursuant to the provisions of Title 33, chapter 16.

12 (3) The purpose of the state fund is to provide a stabilizing force in the workers' compensation market
 13 and to help maintain a competitive market as described in 33-16-1020."

14

15 **Section 23.** Section 39-71-2312, MCA, is amended to read:

16 **"39-71-2312. Definitions.** Unless the context requires otherwise, in this part the following definitions
 17 apply:

18 (1) "Board" means the board of directors of the state compensation insurance fund provided for in
 19 2-15-1019.

20 (2) "Commissioner" means the commissioner of insurance provided for in 2-15-1903.

21 ~~(2)~~(3) "Department" means the department of administration provided for in 2-15-1001.

22 ~~(3)~~(4) "Executive director" means the chief executive officer of the state compensation insurance fund.

23 ~~(4)~~(5) "State fund" means the state compensation insurance fund provided for in 39-71-2313. It is also
 24 known as compensation plan No. 3 or plan No. 3."

25

26 **Section 24.** Section 39-71-2314, MCA, is amended to read:

27 **"39-71-2314. State fund subject to laws applying to state agencies.** The state fund is subject to
 28 laws that generally apply to state agencies, including but not limited to Title 2, chapters 2, 3, 4 ~~(only as provided~~
 29 ~~in 39-71-2316)~~; and 6, and Title 5, chapter 13. The state fund is not exempt from a law that applies to state
 30 agencies unless that law specifically exempts the state fund by name and clearly states that it is exempt from

1 that law."

2

3 **Section 25.** Section 39-71-2315, MCA, is amended to read:

4 **"39-71-2315. Management of state fund -- powers and duties of the board -- business plan**
5 **required.** (1) The management and control of the state fund is vested solely in the board.

6 (2) ~~The Subject to provisions in Title 33, the~~ board is vested with full power, authority, and jurisdiction
7 over the state fund. The board may perform all acts necessary or convenient in the exercise of any power,
8 authority, or jurisdiction over the state fund, either in the administration of the state fund or in connection with
9 the insurance business to be carried on under the provisions of this part, as fully and completely as the
10 governing body of a private mutual insurance carrier, in order to fulfill the objectives and intent of this part. Bonds
11 may not be issued by the board, the state fund, or the executive director.

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

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

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

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

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

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

1 18-4-132."

2

3 **Section 26.** Section 39-71-2316, MCA, is amended to read:

4 **"39-71-2316. Powers of state fund.** (1) For the purposes of carrying out its functions, the state fund
5 may:

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

9 (b) sue and be sued;

10 (c) except as provided in section 21, Chapter 4, Special Laws of May 1990, enter into contracts relating
11 to the administration of the state fund, including claims management, servicing, and payment;

12 (d) collect and disburse money received;

13 (e) adopt classifications and charge premiums for the classifications so that the state fund will be neither
14 more nor less than self-supporting. Premium rates for classifications may only be adopted and changed using
15 a process, a procedure, formulas, and factors set forth in rules adopted under Title 2, chapter 4, parts 2 through
16 4. After the rules have been adopted, the state fund need not follow the rulemaking provisions of Title 2, chapter
17 4, when changing classifications and premium rates. The contested case rights and provisions of Title 2, chapter
18 4, do not apply to an employer's classification or premium rate. The state fund is required to belong to a licensed
19 workers' compensation advisory organization or a licensed workers' compensation rating organization under Title
20 33, chapter 16, part 4, and may use the classifications of employment adopted by the designated workers'
21 compensation advisory organization, as provided in Title 33, chapter 16, part 10, and corresponding rates as
22 a basis for setting its own rates. Except as provided in Title 33, chapter 16, part 10, a workers' compensation
23 advisory organization or a licensed workers' compensation rating organization under Title 33, chapter 16, part
24 4, or other person may not, without first obtaining the written permission of the employer, use, sell, or distribute
25 an employer's specific payroll or loss information, including but not limited to experience modification factors.

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

27 (g) hire personnel;

28 (h) declare dividends if there is an excess of assets over liabilities. However, dividends may not be paid
29 until adequate actuarially determined reserves are set aside.

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

- 1 (j) upon approval of the board, contract with licensed resident insurance producers;
- 2 (k) upon approval of the board, enter into agreements with licensed workers' compensation insurers,
3 insurance associations, or insurance producers to provide workers' compensation coverage in other states to
4 Montana-domiciled employers insured with the state fund;
- 5 (l) upon approval of the board, expend funds for scholarship, educational, or charitable purposes;
- 6 (m) upon approval of the board, including terms and conditions, provide employers coverage under the
7 federal Longshore and Harbor Workers' Compensation Act, {33 U.S.C. 901, et seq.}, the federal Merchant
8 Marine Act, 1920, {Jones Act, 46 U.S.C. 688}, and the federal Employers' Liability Act, {45 U.S.C. 51, et seq.};
- 9 (n) perform all functions and exercise all powers of a private insurance carrier that are necessary,
10 appropriate, or convenient for the administration of the state fund.
- 11 (2) The state fund shall include a provision in every policy of insurance issued pursuant to this part that
12 incorporates the restriction on the use and transfer of money collected by the state fund as provided for in
13 39-71-2320."

14

15 **Section 27.** Section 39-71-2330, MCA, is amended to read:

16 **"39-71-2330. Rate setting -- surplus -- multiple rating tiers.** (1) The board has the authority to
17 establish the rates to be charged by the state fund for insurance, subject to the provisions of Title 33, chapter
18 16. The board shall engage the services of an independent actuary who is a member in good standing with the
19 American academy of actuaries to develop and recommend actuarially sound rates. Rates must be filed with
20 the commissioner as provided in Title 33, chapter 16, and must be set at amounts sufficient, when invested, to
21 carry the estimated cost of all claims to maturity, to meet the reasonable expenses of conducting the business
22 of the state fund, and to amass and maintain an excess of surplus over the amount produced by the national
23 association of insurance commissioners' risk-based capital requirements for a casualty insurer.

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

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

1

2 **Section 28.** Section 39-71-2336, MCA, is amended to read:

3 **"39-71-2336. Manner of electing -- contract or policy of insurance -- payment of premium.** The
4 state fund shall prescribe the procedure by which an employer may elect to be bound by compensation plan No.
5 3, the effective time of the election, and the manner in which the election is terminated for reasons other than
6 default in payment of premiums. Every employer electing to be bound by compensation plan No. 3 must receive
7 from the state fund a contract or policy of insurance in a form approved by the ~~department~~ commissioner. The
8 premium must be paid by the employer to the state fund at ~~such~~ the times ~~as~~ prescribed by the state fund
9 ~~prescribes~~ and must be paid ~~over~~ by the state fund to the state treasurer to the credit of the state fund."

10

11 **Section 29.** Section 39-71-2361, MCA, is amended to read:

12 **"39-71-2361. Legislative audit of state fund.** (1) The legislative auditor shall annually conduct or have
13 conducted a financial and compliance audit of the state fund, including its operations relating to claims for
14 injuries resulting from accidents that occurred before July 1, 1990. The audit must include evaluations of the
15 claims reservation process, the amounts reserved, and the current report of the state fund's actuary. The
16 evaluations may be conducted by persons appointed under 5-13-305. Audit and evaluation costs are an expense
17 of and must be paid by the state fund and must be allocated between those claims for injuries resulting from
18 accidents that occurred before July 1, 1990, and those claims for injuries resulting from accidents that occur on
19 or after that date.

20 (2) The legislative auditor shall annually conduct or have conducted a study to determine if the state fund
21 is in compliance with 39-71-2315(3) and (4) and shall issue a written report of the results of the study. Costs of
22 the study are an expense of the state fund."

23

24 NEW SECTION. **Section 30. Repealer.** Section 33-16-1024, MCA, is repealed.

25

26 NEW SECTION. **Section 31. Codification instruction.** (1) [Section 1] is intended to be codified as
27 an integral part of Title 39, chapter 71, part 23, and the provisions of Title 39, chapter 71, part 23, apply to
28 [section 1].

29 (2) [Section 2] is intended to be codified as an integral part of Title 33, chapter 2, part 13, and the
30 provisions of Title 33, chapter 2, part 13, apply to [section 2].

1

2 NEW SECTION. **Section 32. Effective date.** [This act] is effective July 1, 2005.

3

- END -