

SENATE BILL NO. 140
INTRODUCED BY D. WEINBERG
BY REQUEST OF THE STATE AUDITOR

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING SMALL BUSINESS HEALTH INSURANCE POOL LAWS; ELIMINATING THE ELIGIBILITY OF QUALIFIED ASSOCIATION HEALTH PLANS FOR PREMIUM ASSISTANCE AND PREMIUM INCENTIVE PAYMENTS; CHANGING THE GROUP SIZE LIMITATIONS FOR SMALL EMPLOYERS POTENTIALLY ELIGIBLE FOR PREMIUM INCENTIVE AND PREMIUM ASSISTANCE PAYMENTS; AUTHORIZING THE BOARD OF DIRECTORS OF THE SMALL BUSINESS HEALTH INSURANCE POOL TO ACCEPT CERTAIN SOLE PROPRIETORSHIPS THAT HAVE NOT BEEN REGISTERED BY THE COMMISSIONER OF INSURANCE; AUTHORIZING THE BOARD TO DESIGN, IMPLEMENT, AND ALLOCATE AVAILABLE FUNDING FOR A WELLNESS BENEFIT FOR ELIGIBLE EMPLOYEES AND DEPENDENTS COVERED UNDER PURCHASING POOL COVERAGE; DEDICATING SPECIFIC APPROPRIATION FUNDS; AMENDING SECTIONS 33-22-1815, 33-22-1816, 33-22-2001, 33-22-2002, 33-22-2004, 33-22-2005, 33-22-2006, 33-22-2007, AND 33-22-2008, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 33-22-1815, MCA, is amended to read:

"33-22-1815. Qualifications for voluntary purchasing pool. A voluntary purchasing pool of disability insurance purchasers may be formed solely for the purpose of obtaining disability insurance upon compliance with the following provisions:

- (1) It contains at least 51 eligible employees or sole proprietors without employees.
- (2) It establishes requirements for membership. ~~The~~ Except as provided in Title 33, chapter 22, part 20, ~~the~~ voluntary purchasing pool shall accept for membership any small employers and may accept for membership any employers with at least 51 eligible employees or sole proprietors without employees that otherwise meet the requirements for membership. However, the voluntary purchasing pool may not exclude any small employers that otherwise meet the requirements for membership on the basis of claim experience, occupation, or health status.
- (3) It holds an open enrollment period at least once a year during which new members can join the voluntary purchasing pool.
- (4) It offers coverage to eligible employees of member employers and to the employees' dependents.

Coverage may not be limited to certain employees of member small employers except as provided in 33-22-1811(3)(c).

(5) It does not assume any risk or form self-insurance plans among its members.

(6) (a) Disability insurance policies, certificates, or contracts offered through the voluntary purchasing pool must rate the entire purchasing pool group as a whole and charge each insured person based on a community rate within the common group, adjusted for case characteristics as permitted by the laws governing group disability insurance.

(b) Except for the rates for the small business health insurance pool established in 33-22-2001, rates for voluntary purchasing pool groups must be set pursuant to the provisions of 33-22-1809.

(c) At its discretion, premiums may be paid to the disability insurance policies, certificates, or contracts by the voluntary purchasing pool or by member employers.

(7) A person marketing disability insurance policies, certificates, or contracts for a voluntary purchasing pool must be licensed as an insurance producer."

Section 2. Section 33-22-1816, MCA, is amended to read:

"33-22-1816. Commissioner powers and duties -- application for registration -- reporting insolvency. (1) The commissioner shall develop forms for registration of an organization as a voluntary purchasing pool.

(2) An organization seeking to be registered as a voluntary purchasing pool shall make application to the commissioner. The commissioner shall register an organization as a voluntary purchasing pool upon proof of fulfillment of the qualifications provided in 33-22-1815.

(3) Except as provided in subsection (5), on March 1 of each year, the voluntary purchasing pool shall provide a report and financial statement for the previous calendar year to the commissioner in order that the commissioner may determine:

- (a) whether the operation of the voluntary purchasing pool is fiscally sound;
- (b) whether the voluntary purchasing pool is bearing any risk; and
- (c) the number of individuals covered.

(4) The annual report of the voluntary purchasing pool must disclose its total administrative cost.

(5) A voluntary purchasing pool may choose to operate on a fiscal year other than on the calendar year. A voluntary purchasing pool that establishes a fiscal year that is other than the calendar year shall provide the report required in subsection (3) to the commissioner within 60 days of the voluntary purchasing pool's fiscal

yearend.

(6) A small business health insurance pool established pursuant to 33-22-2001 is exempt from the provisions of this section."

Section 3. Section 33-22-2001, MCA, is amended to read:

"33-22-2001. Establishment of small business health insurance pool -- intent. (1) There is established a nonprofit legal entity known as the small business health insurance pool, with participating membership consisting of all employer members of the purchasing pool.

(2) The small business health insurance pool is created as a voluntary purchasing pool pursuant to the provisions of 33-22-1815 ~~through~~ and 33-22-1817.

(3) Subject to the conditions in 53-6-1201, the purchasing pool shall make group health plan coverage available effective January 1, 2006.

(4) It is the intent of the legislature that the board:

(a) establish criteria that will allow the greatest number of employees possible to be eligible for premium assistance payments by not permitting eligibility for premium assistance payments under this part to employees who continue [to maintain enrollment in another] comprehensive health insurance coverage through a spouse, parent, or other person; and

(b) allow eligible small employers to determine the length of the waiting period that will apply to their employees as long as the waiting period:

(i) is not more than 12 months; and

(ii) applies to all eligible employees within that small group in the same manner.

(5) The legislative auditor shall conduct or have conducted, at least once each biennium covering the prior 2 fiscal years, a financial compliance audit of the board and the purchasing pool. The cost of the audit must be paid for by the purchasing pool as a direct cost not subject to the cap on administrative expenses."

Section 4. Section 33-22-2002, MCA, is amended to read:

"33-22-2002. Small business health insurance pool -- definitions. As used in this part, the following definitions apply:

(1) "Board" means the board of directors of the small business health insurance pool as provided for in 33-22-2003.

(2) "Dependent" has the meaning provided in 33-22-1803.

(3) "Eligible employee" has the meaning provided in 33-22-1803.

(4) ~~(a)~~(A) "Eligible small employer" means an employer who is sponsoring or will sponsor a group health plan and who employed at least ~~two~~ 1 but not more than ~~nine~~ 15 eligible employees during the preceding calendar year and who employs at least ~~two~~ 1 but not more than ~~nine~~ 15 eligible employees on the first day of the plan year.

~~(b) The term includes small employers who obtain group health plan coverage through a qualified association health plan.~~

(B) THE TERM INCLUDES SMALL EMPLOYERS WHO OBTAIN GROUP HEALTH INSURANCE COVERAGE THROUGH A QUALIFIED ASSOCIATION HEALTH PLAN.

(5) "Group health plan" has the meaning provided in 33-22-140.

(6) "Premium" means the amount of money that a health insurance issuer charges to provide coverage under a group health plan.

(7) "Premium assistance payment" means a payment provided for in 33-22-2006 on behalf of eligible employees who qualify to be applied on a monthly basis to premiums paid for group health plan coverage through the purchasing pool ~~or through qualified association health plans.~~

(8) "Premium incentive payment" means a payment provided for in 33-22-2007(1)(b) to eligible small employers who qualify under 33-22-2007 to be applied to premiums paid on a monthly basis for group health plan coverage obtained through the purchasing pool ~~or through qualified association health plans.~~

(9) "Purchasing pool" means the small business health insurance pool.

~~(10) "Qualified association health plan" means a plan established by an association whose members consist of employers who sponsor group health plans for their employees and purchase that coverage through an association that qualifies as a bona fide association, as defined in 33-22-1803, or nonbona fide, as provided for in administrative rule. A qualified association health plan is subject to applicable employer group health insurance law and must receive approval from the commissioner to operate as a qualified association health plan for the purposes of this part.~~

(10) "QUALIFIED ASSOCIATION HEALTH PLAN" MEANS A PLAN ESTABLISHED BY AN ASSOCIATION WHOSE MEMBERS CONSIST OF EMPLOYERS WHO SPONSOR GROUP HEALTH PLANS FOR THEIR EMPLOYEES AND PURCHASE THAT COVERAGE THROUGH AN ASSOCIATION THAT QUALIFIES AS A BONA FIDE ASSOCIATION, AS DEFINED IN 33-22-1803, OR NON-BONA FIDE, AS PROVIDED FOR IN ADMINISTRATIVE RULE. A QUALIFIED ASSOCIATION HEALTH PLAN IS SUBJECT TO APPLICABLE EMPLOYER GROUP HEALTH INSURANCE LAW AND MUST RECEIVE APPROVAL FROM THE COMMISSIONER TO OPERATE AS A QUALIFIED ASSOCIATION HEALTH PLAN FOR THE PURPOSES OF THIS PART.

~~(11)~~~~(10)~~(11) "Related employers" means persons having a relationship as described in section 267 of the Internal Revenue Code, 26 U.S.C. 267.

~~(12)~~~~(11)~~(12) "Tax credit" means a refundable tax credit as provided for in 33-22-2008.

~~(13)~~~~(12)~~(13) "Tax year" means the taxpayer's tax year for federal income tax purposes."

Section 5. Section 33-22-2004, MCA, is amended to read:

"33-22-2004. Powers and duties of board. (1) The board shall:

(a) establish an operating plan that includes but is not limited to administrative and accounting procedures for the operation of the purchasing pool and a schedule for premium incentive and premium assistance payments and that complies with the powers and duties provided for in this section;

(b) recommend to the commissioner the number of employees that may be employed in order to qualify as an eligible small employer;

~~(b)~~(c) require employers and employees to reapply for premium incentive payments or premium assistance payments on an annual basis;

~~(e)~~(d) upon reapplication, give priority to employers and their eligible employees who are already receiving the premium incentive payments and premium assistance payments UNLESS THAT EMPLOYER GROUP NO LONGER MEETS ELIGIBILITY REQUIREMENTS;

~~(d)~~(e) upon reapplication, allow employers to retain eligibility to receive premium incentive payments and premium assistance payments on behalf of their eligible employees if the number of their employees goes over the maximum number, not to exceed ~~nine~~ 15 employees, established by the commissioner in administrative rule;

~~(e)~~(f) renew purchasing pool group health plan coverage for all employer groups, even if the employer group no longer receives or is eligible for a premium incentive or premium assistance payment;

~~(f)~~(g) adopt a premium incentive payment amount schedule that is ~~the same for~~ based on a percentage of the employer's share of the premium that is uniformly applied to all registered eligible small employers who join the purchasing pool ~~or obtain qualified association health plan coverage;~~

~~(g)~~(h) ~~adopt premium assistance payment amounts that, in combination with the premium incentive payments, are consistent with the amounts provided for in 33-22-2006 and 33-22-2008 or,~~ with the assistance of the department of public health and human services, adopt a premium assistance payment schedule that is equitably proportional to the income or wage level for eligible employees;

~~(h)~~(i) establish criteria for determining which employees will be eligible for a premium assistance payment and the amount that the employees will receive from among those eligible small employer groups that

have registered with the commissioner pursuant to 33-22-2008 and applied for coverage under the purchasing pool group health plan ~~or qualified association health plan~~. However, to the extent that federal funds are used to make some premium assistance payments, criteria for those payments must be consistent with any waiver requirements determined by the department of public health and human services pursuant to 53-2-216. Eligibility for employees is not limited to the waiver eligibility groups.

~~(j)~~(i) make appropriate changes to eligibility or other elements in the operating plan, IMPLEMENT A WELLNESS BENEFIT, AND OFFER CAFETERIA PLAN ASSISTANCE, AS PROVIDED FOR IN 26 U.S.C. 125, as needed to reach the goal of expending ~~90%~~ 95% of the funding dedicated to premium incentive payments and premium assistance payments during the current biennium;

~~(j)~~(k) limit the total amount of premium incentive payments and premium assistance payments paid to the amount of available state, federal, and private funding;

~~(k)~~(l) approve no more than six fully insured group health plans with different benefit levels that will be offered to employers participating in the purchasing pool;

~~(j)~~(m) prepare appropriate specifications and bid forms and solicit bids from health insurance issuers authorized to do business in this state;

~~(m)~~(n) contract with no more than three health insurance issuers to underwrite the group health plans that will be offered through the purchasing pool;

~~(n)~~(o) request that the department of public health and human services seek a federal waiver for medicaid matching funds for premium assistance payments based on the department's analysis, as provided in 53-2-216, if it is in the best interests of the purchasing pool;

~~(o)~~(p) comply with the participation requirements provided for in 33-22-1811, EXCEPT TO THE EXTENT THAT ADMINISTRATIVE RULES ALLOW SOLE PROPRIETORS TO PARTICIPATE IN THE PURCHASING POOL;

~~(p)~~(q) meet at least four times annually; and

~~(q)~~(r) within 2 years after the purchasing pool is established and considered stable by the board, examine the possibility of offering an opportunity for individual sole proprietors without employees to purchase insurance from the purchasing pool without premium incentive payments, premium assistance payments, or tax credits.

(2) The board may:

(a) borrow money;

(b) enter into contracts with insurers, administrators, or other persons;

(c) hire employees to perform the administrative tasks of the purchasing pool;

(d) assess its members for costs associated with administration of the purchasing pool and request that

the commissioner transfer funds or request that the department of public health and human services transfer funds from the special revenue account, as provided in 53-6-1201, for that purpose;

(e) set contribution levels for employers;

(f) request that funds be transferred from the funds appropriated for premium incentive payments and premium assistance payments to the general fund to offset tax credits if the number of eligible small employers seeking premium incentive payments and employees receiving premium assistance payments is insufficient to exhaust at least ~~90%~~ 95% of the appropriated funds for the premium incentive and assistance payments, THE WELLNESS BENEFIT, AND THE CAFETERIA PLAN EXPENSES during a biennium;

(G) REQUEST THAT FUNDS BE TRANSFERRED FROM THE FUNDS APPROPRIATED FOR TAX CREDITS TO THE FUNDS APPROPRIATED FOR PREMIUM INCENTIVE PAYMENTS AND PREMIUM ASSISTANCE PAYMENTS IF THE NUMBER OF ELIGIBLE SMALL EMPLOYERS SEEKING TAX CREDITS IS INSUFFICIENT TO EXHAUST AT LEAST 95% OF THE FUNDS APPROPRIATED FOR TAX CREDITS;

~~(g)~~(H) seek other federal, state, and private funding sources;

~~(h)~~(I) accept all small employer groups who apply for coverage under the small business health insurance pool group health plan even if they are not eligible for any tax credit or premium incentive payment and have not been registered by the commissioner pursuant to 33-22-2008;

~~(i) receive from the commissioner's office or the department of public health and human services premium incentive payments on behalf of eligible small employers and premium assistance payments on behalf of eligible employees, collect the employer or employee premiums from the employer or employees, and make premium payments to insurers on behalf of the eligible small employers and employees;~~

~~———(j) request the commissioner to direct more than 30% of the available funding for premium incentives and premium assistance payments to qualified association health plan coverage instead of purchasing pool coverage; and~~

~~(j)~~(J) accept individual sole proprietors, who do not have any eligible employees and who apply for coverage under the small business health insurance pool group health plan, even if they are not eligible for any premium incentive payment or tax credit and have not been registered by the commissioner pursuant to 33-22-2008;

~~(k)~~(j)(K) pay appropriate commissions to licensed insurance producers who market purchasing pool coverage; and

~~(k)~~(L) design, implement, and allocate funding, if available, for a wellness benefit in addition to benefits provided in the insurance contract, in which eligible employees and dependents covered under purchasing pool

coverage may participate."

Section 6. Section 33-22-2005, MCA, is amended to read:

"33-22-2005. Duties of commissioner -- rulemaking authority. Subject to the conditions in 53-6-1201, the commissioner shall:

(1) adopt rules regarding eligibility, the implementation of this part, including rules regarding the administration of the premium incentive payments, premium assistance payments, and tax credits, ~~the approval of qualified association health plans; THE APPROVAL OF QUALIFIED ASSOCIATION HEALTH PLANS,~~ and the registration process. The rules regarding tax credits may not relate to the filing of tax returns and claiming the tax credit on the tax returns.

(2) supervise the creation of the purchasing pool within the limits described in this part;

(3) approve or disapprove the operating plan for the purchasing pool;

(4) if the board chooses to hire one, approve or disapprove the selection of a third-party administrator to handle the administration of the purchasing pool;

(5) with the assistance of the department of public health and human services, approve or disapprove the schedule of premium incentive payment or premium assistance payment amounts adopted by the board as provided in 33-22-2004;

(6) approve or disapprove any contracts between a health insurance issuer and the purchasing pool;

(7) approve or disapprove all group health plans being offered by insurers through the purchasing pool;

(8) conduct periodic audits of the financial transactions conducted by the purchasing pool;

~~(9) allow up to 30%, or more if requested by the board and approved by the commissioner, of the available funding for the premium incentive payments and premium assistance payments to be applied to small group health plan coverage purchased through a qualified association health plan; and~~

~~(10)(9) make applicable premium incentive payments or premium assistance payments for qualified association health plan coverage on behalf of eligible small employers and employees or direct the purchasing pool to make the payments; and~~

~~(10) approve or disapprove any wellness benefit and any funding allocated for that benefit that is proposed by the board for pool participants; and~~

~~(11) approve or disapprove associations as qualified if their members consist of employers who sponsor group health plan coverage for their employees and purchase that coverage through an association that qualifies as a bona fide association, as defined in 33-22-1803, or nonbona fide, as provided for in administrative rule. A~~

~~qualified association health plan is subject to applicable employer group health insurance law.~~

(11) APPROVE OR DISAPPROVE ASSOCIATIONS AS QUALIFIED IF THEIR MEMBERS CONSIST OF EMPLOYERS WHO SPONSOR GROUP HEALTH PLAN COVERAGE FOR THEIR EMPLOYEES AND PURCHASE THAT COVERAGE THROUGH AN ASSOCIATION THAT QUALIFIES AS A BONA FIDE ASSOCIATION, AS DEFINED IN 33-22-1803, OR NON-BONA FIDE, AS PROVIDED FOR IN ADMINISTRATIVE RULE. A QUALIFIED ASSOCIATION HEALTH PLAN IS SUBJECT TO APPLICABLE EMPLOYER GROUP HEALTH INSURANCE LAW.

~~(11)~~(12) adopt rules pertaining to eligibility requirements for sole proprietors that do not have employees."

Section 7. Section 33-22-2006, MCA, is amended to read:

"33-22-2006. Premium incentive payments, premium assistance payments, and tax credits for small employer health insurance premiums paid -- eligibility for small group coverage -- amounts. (1) ~~An~~ SUBJECT TO SUBSECTION (2), AN employer is eligible to apply for premium incentive payments and premium assistance payments or a tax credit under this part if the employer and any related employers:

(a) did not have more than the number of employees established for eligibility by the commissioner at the time of registering for premium incentive payments or premium assistance payments or a tax credit under 33-22-2008;

(b) provide or will provide a group health plan for the employer's and any related employer's employees;

(c) do not have delinquent state income tax liability owing to the department of revenue from previous years;

(d) have been registered as eligible small employer participants by the commissioner as provided in 33-22-2008; and

(e) (i) do not have any employees, not including an owner, partner, or shareholder of the business, who received more than \$75,000 in gross compensation, including bonuses and commissions, from the small employer or related employer in the prior tax year; and

(ii) in the case of an employer who is a sole proprietor without employees, did not receive more than \$75,000 in gross compensation in the prior tax year.

(2) AN EMPLOYER MAY NOT RECEIVE A PREMIUM INCENTIVE PAYMENT, A PREMIUM ASSISTANCE PAYMENT, OR A TAX CREDIT FOR THE PREMIUM OF ANY OF THE FOLLOWING INDIVIDUALS OR THE INDIVIDUAL'S DEPENDENTS IF THE INDIVIDUAL'S GROSS INCOME IN THE PRIOR TAX YEAR EXCEEDS \$75,000:

(A) A SOLE PROPRIETOR OF A SOLE PROPRIETORSHIP THAT IS THE EMPLOYER;

(B) A PARTNER OF A PARTNERSHIP THAT IS THE EMPLOYER;

(C) A SHAREHOLDER OF A CORPORATION THAT IS THE EMPLOYER;

(D) A MEMBER OR MANAGER OF A LIMITED LIABILITY COMPANY THAT IS THE EMPLOYER; OR

(E) THE TRUSTEE OF A TRUST THAT IS THE EMPLOYER.

~~(2)~~(3) The commissioner shall establish, by rule, the ~~maximum~~ number of employees that may be employed to qualify as a an eligible small employer under subsection (1). However, the number may not be ~~less than two employees or more than nine~~ 15 employees. The commissioner shall consider the recommendation of the board when changing the rule pertaining to the number of employees that determines eligibility. The ~~maximum~~ number may be different for employers seeking premium incentive payments and premium assistance payments than for employers seeking a tax credit. The number must be set to maximize the number of employees receiving coverage under this part. The commissioner may not change the ~~maximum~~ employee number more often than every 6 months. If the ~~maximum~~ number of allowable employees is changed, the change does not disqualify registered employers with respect to the tax year for which the ~~employer has~~ employers have registered.

~~(3)~~(4) Except as provided in subsection ~~(4)~~ (5), an eligible small employer may claim a tax credit in the following amounts:

(a) (i) not more than \$100 each month for each employee and \$100 each month for each employee's spouse, if the employer covers the employee's spouse, if the average age of the group is under 45 years of age; or

(ii) not more than \$125 each month for each employee and \$100 each month for each employee's spouse, if the employer covers the employee's spouse, if the average age of the group is 45 years of age or older; and

(b) not more than \$40 each month for each dependent, other than the employee's spouse, if the employer is paying for coverage for the dependents, not to exceed two dependents of an employee in addition to the employee's spouse.

~~(4)~~(5) An employer may not claim a tax credit:

(a) in excess of 50% of the total premiums paid by the employer for the qualifying small group;

(b) for premiums paid from a medical care savings account provided for in Title 15, chapter 61; or

(c) for premiums for which a deduction is claimed under 15-30-121 or 15-31-114.

~~(5)~~(6) An employer may not claim a premium incentive payment in excess of 50% of the total premiums paid by the employer for the qualifying small group.

~~(6)~~(7) A sole proprietor without employees may receive a premium assistance payment, but may not

receive a premium incentive payment."

Section 8. Section 33-22-2007, MCA, is amended to read:

"33-22-2007. Filing for tax credit -- filing for premium incentive payments and premium assistance payments. (1) An eligible small employer may:

(a) apply the tax credit against taxes due for the current tax year on a return filed pursuant to Title 15, chapter 30 or 31; or

(b) if the eligible small employer did not sponsor a group health plan for employees during the 2 years prior to the first tax year of registration for the premium incentive payments or premium assistance payments or operates a new business that is less than 2 years old and has never sponsored a group health plan, apply to receive monthly premium incentive payments and premium assistance payments to be applied to coverage obtained through the purchasing pool ~~or qualified association health plan coverage approved by the commissioner.~~

(2) An eligible small employer may not, in the same tax year, apply the tax credit against taxes due for the current tax year, as provided for in subsection (1)(a), and receive premium incentive payments, as provided for in subsection (1)(b).

(3) The premium incentive payments and premium assistance payments provided for in subsection (1)(b) must be paid pursuant to a plan of operation implemented by the board and any applicable administrative rules.

(4) (a) If an eligible small employer's tax credit as provided in subsection (1)(a) exceeds the employer's liability under 15-30-103 or 15-31-121, the amount of the excess must be refunded to the eligible small employer. The tax credit may be claimed even if the eligible small employer has no tax liability under 15-30-103 or 15-31-121.

(b) A tax credit is not allowed under 15-30-129, 15-31-132, or any other provision of Title 15, chapter 30 or 31, with respect to any amount for which a tax credit is allowed under this part.

(5) The department of revenue or the commissioner may grant a reasonable extension for filing a claim for premium incentive payments or premium assistance payments or a tax credit whenever, in the department's or the commissioner's judgment, good cause exists. The department of revenue and the commissioner shall keep a record of each extension and the reason for granting the extension.

(6) (a) If an employer that would have a claim under this part ceases doing business before filing the claim, the representative of the employer who files the tax return or pays the premium may file the claim.

(b) If a corporation that would have a claim under this part merges with or is acquired by another

corporation and the merger or acquisition makes the previously eligible corporation ineligible for the premium incentive payments, premium assistance payments, or tax credit in the future, the surviving or acquired corporation may file for the premium incentive payments, premium assistance payments, or tax credit for any claim period during which the former eligible corporation remained eligible.

(c) If an employer that would have a claim under this part files for bankruptcy protection, the receiver may file for the premium incentive payments, premium assistance payments, or tax credit for any claim period during which the employer was eligible."

Section 9. Section 33-22-2008, MCA, is amended to read:

"33-22-2008. Registration -- funding limitations -- transfers -- maximum number -- waiting list -- information transfer for tax credits. (1) (a) Each eligible small employer that proposes to apply for premium incentive payments and premium assistance payments or a tax credit under this part must be registered each year with the commissioner. ~~The commissioner shall begin taking new applications for 2006 on October 1, 2005.~~

(b) An eligible small employer may submit a new application for the premium incentive payments and premium assistance payments or the tax credit anytime during the year, but in order to maintain the employer's registration for the next year, the registration application must be renewed each year.

(c) The commissioner shall begin accepting renewal applications on October 1 of each year and stop accepting renewal applications on October 31 of each year.

(d) The registration application must include the number of individuals covered, as of the date of the registration application, under the small group health plan for which the employer is seeking premium incentive payments and premium assistance payments or a tax credit. If, after the initial registration, the number of individuals increases, the employer may apply to register the additional individuals, but those additional individuals may be added only at the discretion of the commissioner, who shall limit enrollment based on available funds.

(e) A small employer is not eligible to apply for premium incentive payments and premium assistance payments or a tax credit for a number of employees, or the employees' spouses or dependents, over the number that has been established in 33-22-2006 as the maximum number of employees an employer may have in order to qualify for registration for the time period in question.

(f) An employer's decision to apply for premium incentive payments and premium assistance payments ~~or~~ INSTEAD OF a tax credit is irrevocable for 12 months or until the purchasing pool group health plan ~~or qualified association health plan renews its registration~~ is renewed, whichever time period is less. An employer may

choose to discontinue receiving any premium incentive payments and premium assistance payments or tax credits at any time.

(2) (A) The commissioner shall register qualifying eligible small employers in the order in which applications are received and according to whether or not the application is for premium incentive payments and premium assistance payments or a tax credit.

(B) (I) Initially, 60% of the available funding must be dedicated to provide and maintain premium incentive payments and premium assistance payments for eligible small employers who have not sponsored group health plans in the previous 2 years and who chose to join the purchasing pool ~~or a qualified association health plan~~ and 40% of the available funding must be dedicated to tax credits for eligible small employers who currently sponsor a small group health plan.

(II) SIXTY PERCENT OF ANY ADDITIONAL FUNDS UP TO \$1 MILLION APPROPRIATED TO THIS PROGRAM FROM THE SPECIAL REVENUE ACCOUNT THAT IS AN INCREASE OVER THE PRIOR BIENNIUM MUST BE DEDICATED TO PROVIDE AND MAINTAIN PREMIUM INCENTIVE PAYMENTS AND PREMIUM ASSISTANCE PAYMENTS FOR EMPLOYERS WHO HAVE NOT SPONSORED GROUP HEALTH PLANS IN THE PREVIOUS 2 YEARS AND WHO CHOOSE TO JOIN THE PURCHASING POOL AS PROVIDED IN 53-6-1201(3)(E).

(III) FORTY PERCENT OF ANY ADDITIONAL FUNDS UP TO \$1 MILLION APPROPRIATED TO THIS PROGRAM FROM THE SPECIAL REVENUE ACCOUNT THAT IS AN INCREASE OVER THE PRIOR BIENNIUM MUST BE DEDICATED TO PROVIDE AND MAINTAIN TAX CREDITS, AS PROVIDED IN 53-6-1201(3)(D), FOR EMPLOYERS WHO HAVE NOT SPONSORED GROUP HEALTH PLANS IN THE PREVIOUS 2 YEARS AND WHO CHOOSE TO JOIN A QUALIFIED ASSOCIATION HEALTH PLAN.

(C) Funding may be transferred from the allocated fund for premium incentive payments and premium assistance payments to the general fund for tax credits if the board requests the transfer, as provided in 33-22-2004, and the commissioner approves the request.

(D) FUNDING MAY BE TRANSFERRED FROM THE ALLOCATED FUND FOR TAX CREDITS TO THE ALLOCATED FUND FOR PREMIUM INCENTIVE PAYMENTS AND PREMIUM ASSISTANCE PAYMENTS IF THE BOARD REQUESTS THE TRANSFER AS PROVIDED IN 33-22-2004 AND THE COMMISSIONER APPROVES THE REQUEST.

(3) (a) The maximum number of eligible small employers is reached when the anticipated amount of claims for premium incentive payments and premium assistance payments and tax credits has reached 95% of the amount of money allocated for premium incentive payments and premium assistance payments and tax credits.

(b) The commissioner may establish a waiting list for applicants that are otherwise qualified for registration but cannot be registered because of a lack of money or because the maximum number of eligible

small employers has been reached.

(c) The commissioner shall mail to each employer registered under this section a notice of registration containing a unique registration number and indicating eligibility for either premium incentive payments and premium assistance payments or a tax credit. The commissioner shall also issue to each employer that is eligible for premium incentive payments and premium assistance payments or the tax credit a certificate, placard, sticker, or other evidence of participation that may be publicly posted.

(d) The commissioner shall notify all persons who applied for registration and who were not accepted that they were not registered and the reason that they were not registered.

(4) A prospective participant shall apply for registration on a form provided by the commissioner. The prospective participant shall:

(a) provide the number of eligible employees and whether the employer qualifies under 33-22-2006;

(b) provide information that is necessary to estimate the amount of the premium incentive payments and premium assistance payments payable to the applicant or the amount of the tax credit available to the applicant, such as the ages of employees or dependents, relationships of employees' dependents, and information required by the department of public health and human services for determination of eligibility for premium assistance payments matched by federal funds;

(c) indicate whether the prospective employer intends to pursue the claim as a tax credit through the income tax process or through premium incentive payments and premium assistance payments to be applied toward purchasing pool or ~~eligible-qualified association health plan coverage~~ COVERAGE;

(d) indicate whether or not the employer previously sponsored a group health plan and, if so, when and for how long; and

(e) provide any additional information determined by the commissioner to be necessary to support an application.

(5) (A) Each year, small employer participants shall reregister with the commissioner in order to determine the participant's continued eligibility.

(B) SMALL EMPLOYER PARTICIPANTS IN THE PURCHASING POOL WHO NO LONGER MEET ELIGIBILITY REQUIREMENTS BECAUSE OF STATUTORY CHANGES MUST BE ALLOWED TO REMAIN IN THE PURCHASING POOL, BUT PREMIUM INCENTIVE PAYMENTS AND PREMIUM ASSISTANCE PAYMENTS WILL BE DISCONTINUED BEGINNING IN JANUARY FOLLOWING A LOSS OF ELIGIBILITY STATUS TRIGGERED BY REREGISTRATION IN OCTOBER.

(C) SMALL EMPLOYER PARTICIPANTS WHO CURRENTLY RECEIVE A TAX CREDIT BUT NO LONGER MEET ELIGIBILITY REQUIREMENTS BECAUSE OF STATUTORY CHANGES WILL LOSE ELIGIBILITY TO CLAIM A TAX CREDIT BEGINNING IN JANUARY

FOLLOWING A LOSS OF ELIGIBILITY STATUS TRIGGERED BY REREGISTRATION IN OCTOBER.

(6) The commissioner shall transmit to the department of revenue, at least annually, a list of eligible small employers that are taxpayers entitled to the tax credit and shall specify the taxpayer's name and tax identification number, the tax year to which the credit applies, the amount of the credit, and whether the credit is to be applied against taxes due on the taxpayer's return or paid as premium incentive payments or premium assistance payments. Unless there has been a finding of fraud or misrepresentation on the part of the taxpayer regarding issues relating to eligibility for the tax credit, the department of revenue may not redetermine or change the commissioner's determination regarding the taxpayer's entitlement to and amount of the tax credit.

(7) If the department of public health and human services receives approval for a section 1115 waiver as provided in 53-2-216, the commissioner shall work with the department of public health and human services with regard to eligibility determinations as required by federal law or waiver conditions."

NEW SECTION. **Section 10. Effective date.** [This act] is effective on passage and approval.

- END -

