HOUSE BILL NO. 22

INTRODUCED BY K. DUDIK

BY REQUEST OF THE STATE AUDITOR

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING INSURANCE LAW; REVISING CONFIDENTIALITY REQUIREMENTS PERTAINING TO WORKING PAPERS; ESTABLISHING THAT THE PRESENTATION OF COUNTERFEIT DOCUMENTS IS A FORM OF INSURANCE FRAUD; REVISING DEPOSITARY OR CUSTODIAL AGREEMENTS REQUIREMENTS; ~~CLARIFYING THE DEFINITION OF "FOREIGN COUNTRY";~~ REVISING BYLAWS OF FARM MUTUAL INSURERS WITH RESPECT TO THE TIME OF ANNUAL MEETINGS; MODIFYING MEMBERSHIP REQUIREMENTS FOR THE GUARANTY ASSOCIATION BOARD OF DIRECTORS; MODIFYING THE ~~DEFINITIONS~~ DEFINITION OF "HOME STATE" ~~AND "PUBLIC ADJUSTER"~~; CLARIFYING LICENSING REQUIREMENTS FOR NONRESIDENT ADJUSTERS AND CONSULTANTS; REVISING LICENSE DISPLAY REQUIREMENTS FOR INSURANCE PRODUCERS; MODIFYING THE TYPE OF PLANS SMALL EMPLOYER CARRIERS ARE REQUIRED TO OFFER TO SMALL EMPLOYERS; APPLYING CAPTIVE INSURANCE CAPITAL SURPLUS REQUIREMENTS TO RISK RETENTION GROUPS; AUTHORIZING ~~A PROTECTED CELL CAPTIVE INSURANCE COMPANY TO MAKE LOANS TO ITS PARENT COMPANY~~ ANY CAPTIVE INSURANCE COMPANY TO MAKE LOANS TO ITS AFFILIATES; REVISING REQUIREMENTS FOR BUSINESS WRITTEN BY A PROTECTED CELL CAPTIVE INSURANCE COMPANY; ESTABLISHING REQUIREMENTS FOR A PROTECTED CELL CAPTIVE INSURANCE COMPANY'S REINSURED BUSINESS; ELIMINATING THE REQUIREMENT THAT INSURERS AND HEALTH SERVICE CORPORATIONS OFFER GROUP UNIFORM HEALTH BENEFIT COVERAGE; AMENDING SECTIONS 33-1-409, 33-1-1202, 33-2-604, 33-2-606, 33-2-611, 33-2-612, 33-2-1303, 33-3-401, 33-4-302, 33-10-104, 33-17-102, 33-17-214, 33-17-301, 33-17-503, 33-17-505, 33-17-1101, ~~33-20-509, 33-20-903,~~ 33-22-1811, 33-22-2002, 33-28-104, 33-28-202, AND 33-28-301, MCA; REPEALING SECTION 33-22-522, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 33-1-409, MCA, is amended to read:

"33-1-409. Examination reports -- hearings -- confidentiality -- publication. (1) All examination

reports must be composed only of facts appearing upon the books, records, or other documents of the company, its agents, or other persons examined or as ascertained from the testimony of its officers or agents or other persons examined concerning its affairs. The report must contain the conclusions and recommendations that the examiners find reasonably warranted from the facts.

(2) ~~No~~ Not later than 60 days following completion of the examination, the examiner in charge shall file with the department a verified written report of examination under oath. Upon receipt of the verified report, the department shall transmit the report to the company examined, together with a notice that gives the company examined a reasonable opportunity, but not more than 30 days, to make a written submission or rebuttal with respect to any matters contained in the examination report.

(3) Within 30 days of the end of the period allowed for the receipt of written submissions or rebuttals, the commissioner shall fully consider and review the report, together with any written submissions or rebuttals and any relevant portions of the examiner's workpapers and enter an order:

(a) adopting the examination report as filed or with modification or corrections. If the examination report reveals that the company is operating in violation of any law, regulation, or prior order of the commissioner, the commissioner may order the company to take any action the commissioner considers necessary and appropriate to cure the violation.

(b) rejecting the examination report with directions to the examiners to reopen the examination for purposes of obtaining additional data, documentation, information, or testimony and of refiling pursuant to subsection (2); or

(c) calling for an investigatory hearing with no less than 20 days' notice to the company for purposes of obtaining additional data, documentation, information, and testimony.

(4) (a) All orders entered pursuant to subsection (3)(a) must be accompanied by findings and conclusions resulting from the commissioner's consideration and review of the examination report, relevant examiner workpapers, and any written submissions or rebuttals. An order must be considered a final administrative decision and may be appealed pursuant to Title 33, chapter 1, part 7, and must be served upon the company by certified mail, together with a copy of the adopted examination report. Within 30 days of the issuance of the adopted report, the company shall file affidavits executed by each of its directors stating under oath that they have received a copy of the adopted report and related orders.

(b) (i) A hearing conducted under subsection (3)(c) by the commissioner or an authorized representative must be conducted as a nonadversarial, confidential, investigatory proceeding as necessary for the resolution

of any inconsistencies, discrepancies, or disputed issues apparent upon the face of the filed examination report or raised by or as a result of the commissioner's review of relevant workpapers or by the written submission or rebuttal of the company. Within 20 days of the conclusion of the hearing, the commissioner shall enter an order pursuant to subsection (3)(a).

(ii) The commissioner may not appoint an examiner as an authorized representative to conduct the hearing. The hearing must proceed expeditiously with discovery by the company limited to the examiner's workpapers that tend to substantiate any assertions set forth in any written submission or rebuttal. The commissioner or the commissioner's representative may issue subpoenas for the attendance of witnesses or the production of documents considered relevant to the investigation, whether under the control of the department, the company, or other persons. The documents produced must be included in the record, and testimony taken by the commissioner or the commissioner's representative must be under oath and preserved for the record. This section does not require the department to disclose any information or records that would indicate or show the existence or content of an investigation or activity of a criminal justice agency.

(iii) The hearing must proceed with the commissioner or the commissioner's representative posing questions to the persons subpoenaed. The company and the department may present testimony relevant to the investigation. Cross-examination may be conducted only by the commissioner or the commissioner's representative. The company and the department must be permitted to make closing statements and may be represented by counsel of their choice.

(5) (a) Upon the adoption of the examination report under subsection (3)(a), the commissioner shall continue to hold the content of the examination report as private and confidential information for a period of 30 days, except to the extent provided in subsection (2). After 30 days, the commissioner shall open the report for public inspection as long as a court of competent jurisdiction has not stayed its publication.

(b) This title does not prevent and may not be construed as prohibiting the commissioner from disclosing the content of an examination report or preliminary examination report, the results of an examination, or any matter relating to a report or results to the insurance department of this state or of any other state or country, to law enforcement officials of this state or of any other state, or to an agency of the federal government at any time as long as the agency or office receiving the report or matters relating to the report agrees in writing to hold it in a manner consistent with this part.

(c) If the commissioner determines that regulatory action is appropriate as a result of an examination, the commissioner may initiate any proceedings or actions as provided by law.

~~(6) All working papers, confidential criminal justice information, as defined in 44-5-103, personal information protected by an individual privacy interest, and trade secrets, as defined in 30-14-402, specifically identified and for which there are reasonable grounds of privilege asserted by the party claiming the privilege obtained by or disclosed to the commissioner or any other person in the course of an examination made under this part must be given confidential treatment, are not subject to subpoena, and may not be made public by the commissioner or any other person, except to the extent provided in subsection (5). Access may also be granted to the NAIC. The persons given access to confidential criminal justice information, trade secrets, and personal information shall agree in writing, prior to receiving the information, to treat the information in the manner required by this section unless the prior written consent of the company to which it pertains has been obtained.~~

(6) (a) Working papers must be given confidential treatment, are not subject to subpoena, are not discoverable or admissible as evidence in any private action, and may not be made public by the commissioner or any other person except to the extent provided in 33-1-311(5) and subsection (5) of this section. Persons given access to working papers shall agree in writing, prior to receiving the information, to treat the information in the manner required by this section unless prior written consent has been obtained from the company to which the working papers pertain.

(b) For purposes of subsection (6)(a), "working papers" means:

(i) all papers and copies created, produced, obtained by, or disclosed to the commissioner or any other person in the course of an examination or analysis by the commissioner;

(ii) confidential criminal justice information, as defined in 44-5-103;

(iii) personal information protected by an individual privacy interest; and

(iv) specifically identified trade secrets, as defined in 30-14-402, that have been obtained by or disclosed to the commissioner or any other person in the course of an examination made under this part for which there are reasonable grounds of privilege that are asserted by the party claiming the privilege."

Section 2. Section 33-1-1202, MCA, is amended to read:

"33-1-1202. Insurance fraud. A person commits the act of insurance fraud when the person:

(1) for the purpose of obtaining any money or benefit, presents or causes to be presented to any insurer, purported insurer, producer, or administrator, as defined in 33-17-102, any written or oral statement, including computer-generated documents, containing false, incomplete, or misleading information concerning any fact or thing material to, as part of, or in support of a claim for payment or other benefit pursuant to an insurance policy;

(2) assists, abets, solicits, or conspires with another to prepare or make any written or oral statement containing false, incomplete, or misleading information concerning any fact that is intended to be presented to any insurer or purported insurer or in connection with, material to, or in support of any claim for payment or other benefit pursuant to an insurance policy or contract;

(3) presents or causes to be presented to or by an insurer, purported insurer, producer, or administrator, as defined in 33-17-102, a materially false or altered application of insurance;

(4) accepts premium money knowing that coverage will not be provided;

(5) as a health care provider, submits a false or altered bill or report of physical condition to an insurer; ~~or~~

(6) offers or accepts a direct or indirect inducement to file a false statement of claim with the intent of deceiving an insurer; or

(7) presents or causes to be presented counterfeit insurance documents to any person."

Section 3. Section 33-2-604, MCA, is amended to read:

"33-2-604. Depositary or custodian. (1) Deposits made in this state under this code ~~shall~~ must be made through the office of the commissioner ~~in safe deposit~~ or under custodial arrangements as required or approved by the commissioner consistent with the purposes of ~~such~~ the deposit~~, with an established safe deposit institution,~~. The deposit must be made with a bank~~,~~ or trust company located in the ~~city of Helena,~~ state of Montana~~,~~ and selected by the insurer with the commissioner's approval. The commissioner may, with good cause, withhold or withdraw approval.

~~(2) No safe deposit shall be used for any such deposit unless the box or compartment in which are kept the assets and securities comprising the deposit requires two separate and distinctly differing keys or one key and a combination, in the case of a box having a combination lock, to open the same. One of such keys or the combination shall at all times be kept by the commissioner, and the other key or the combination shall at all times be kept by the insurer. Such box or compartment shall not at any time be opened or remain open except through the joint action and in the presence of both the commissioner and a duly authorized officer or representative of the insurer.~~

~~(3)~~(2) ~~Where of~~ For convenience purposes, ~~to the insurer~~ in the buying, selling, and exchange of securities comprising its deposit and in the collection of interest and other income currently accruing ~~thereon~~ on the securities, the insurer may, with the commissioner's advance written approval ~~in advance~~, deposit ~~certain of~~

~~such~~ the securities under custodial arrangements with an established bank or trust company located outside this state.~~, so long as receipts~~ Any receipts representing ~~all such~~ the securities that are issued by ~~such~~ an out-of-state custodian bank or trust company ~~and are held in safe deposit or custody~~ are subject to the requirements of ~~subsections~~ subsection (1) ~~and (2) of this section~~.

~~(4)~~(3) The form and terms of all ~~such~~ depositary or custodial agreements ~~shall~~ must be as prescribed or approved by the commissioner, consistent with the applicable provisions of this code.

~~(5)~~(4) The compensation and expenses of the depositary or custodian ~~shall~~ must be borne by the insurer."

Section 4. Section 33-2-606, MCA, is amended to read:

"33-2-606. Assignment or conveyance of assets or securities. All securities not negotiable by delivery and deposited under this code must be duly assigned to the commissioner ~~and the commissioner's successors in office~~. In the case of securities held under custodial arrangements outside this state pursuant to 33-2-604~~(3)~~(2), the custodian's receipt for the securities must be delivered, if negotiable, or assigned to the commissioner if legal title to the securities is vested in the commissioner. The insurer shall transfer or convey to the commissioner ~~and the commissioner's successors in office~~ all other assets deposited. Upon release to the insurer of any asset or security, the commissioner shall reassign or transfer or reconvey the asset or security to the insurer."

Section 5. Section 33-2-611, MCA, is amended to read:

"33-2-611. Deficiency of deposit -- revocation of certificate. If for any reason the market value of assets and securities of an insurer held on deposit in this state or in another state under custodial arrangements authorized by 33-2-604~~(3)~~(2) falls below the amount required under this code to be ~~so~~ held, the insurer shall promptly deposit other or additional assets or securities eligible for deposit under this part and in an amount sufficient to cure ~~such~~ the deficiency. If the insurer has failed to cure the deficiency within 20 days after receipt of notice ~~thereof~~ of the deficiency by ~~registered or~~ certified mail from the commissioner, the commissioner shall ~~forthwith~~ revoke the insurer's certificate of authority."

Section 6. Section 33-2-612, MCA, is amended to read:

"33-2-612. Duration and release of deposit. (1) Every deposit made in this state by an insurer pursuant

to this code, including assets and securities held in another state under custodial arrangements permitted by 33-2-604~~(3)~~(2), must be held as long as there is outstanding any liability of the insurer as to which the deposit was ~~so~~ required, or if a deposit was required under the retaliatory law, 33-2-709, the deposit must be held for as long as the basis of the retaliation exists.

(2) Upon the request of a domestic insurer, the commissioner shall return to the insurer the whole or any portion of the assets and securities of the insurer held on deposit when the commissioner is satisfied that the assets and securities to be returned are not subject to liability and are not required to be held by any provision of law or purposes of the original deposit. If the insurer has reinsured all its outstanding risks in another insurer or insurers authorized to transact insurance in this state, then the commissioner shall deliver the assets and securities to the insurer or insurers assuming the risks upon:

(a) written notice to the commissioner by the domestic insurer that the assets and securities have been assigned, transferred, and set over to the reinsuring insurer or insurers, accompanied by a verified copy of the assignment, transfer, or conveyance; and

(b) in the case of deposits of the reserves of domestic life insurers under 33-2-531, proof satisfactory to the commissioner that the reinsuring insurer or insurers have deposited or will deposit and will maintain on deposit in public custody through the insurance supervisory official of its state of domicile assets and securities of like quality in an amount not less than the reserves of the policies and contracts reinsured, in addition to any other deposit of the insurer required or permitted by law, and, unless the insurer is required to deposit and maintain on deposit all of its reserves, that the deposit of the reserves will be deposited and held on deposit for the special benefit and protection of the holders of the life insurance policies and annuity contracts reinsured.

(3) The commissioner shall return to a foreign insurer any deposit made in this state by the insurer when the insurer has ceased transacting insurance in this state or in the United States, and the insurer is not subject to any liability in this state on account of which the deposit was held.

(4) If the insurer is subject to delinquency proceedings, as defined in part 13 of this chapter, upon the order of a court of competent jurisdiction, the commissioner shall yield the assets and securities held on deposit to the receiver, conservator, rehabilitator, or liquidator of the insurer or to any other properly designated official or officials who succeed to the management and control of the insurer's assets.

(5) A release of deposited assets may not be made except upon application to and the written order of the commissioner. The commissioner does not have personal liability for release of any deposit or part of a deposit made in good faith."

Section 7. Section 33-2-1303, MCA, is amended to read:

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

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

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

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

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

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

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

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

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

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

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

(6) "Domiciliary state" means the state in which an insurer is incorporated or organized or, in the case of an alien insurer, its state of entry.

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

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

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

(8) "Foreign country" means any ~~other~~ jurisdiction not ~~in any state within the United States~~ IN ANY STATE.

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

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

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

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

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

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

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

~~(iii) as to any insurer licensed to do business in this state as of July 1, 1979, which does not meet the standard established under subsection (11)(a)(ii), for a period not to exceed 3 years from July 1, 1979, the inability to pay its obligations when they are due or that its admitted assets do not exceed its liabilities plus any required capital contribution ordered by the commissioner under provisions of the insurance law~~.

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

(12) "Insurer" means any person who has done, purports to do, is doing, or is licensed to do insurance business and is or has been subject to the authority of or to liquidation, rehabilitation, reorganization, supervision, or conservation by any insurance commissioner. Any other persons included under 33-2-1304 are considered to be insurers.

(13) "Preferred claim" means any claim with respect to which the terms of this part accord priority of

payment from the general assets of the insurer.

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

(15) "Reciprocal state" means any state other than this state in which in substance and effect 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 in force requiring that the commissioner or equivalent official be the receiver of a delinquent insurer and in which some provision exists for the avoidance of fraudulent conveyances and preferential transfers.

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

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

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

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

Section 8. Section 33-3-401, MCA, is amended to read:

"33-3-401. Home office and records -- penalty for unlawful removal of records or assets. (1) Each domestic insurer ~~must have and~~ shall maintain its principal place of business and home office in this state and shall maintain at its principal place of business or home office complete records of its assets, transactions, and affairs in accordance with methods and systems customary or suitable to the kind or kinds of insurance that it transacts. Records of the insurer's operations and other financial records reasonably related to its insurance operations for the preceding 5 years must be maintained and be available to the commissioner or the commissioner's examiner.

(2) Each domestic insurer ~~must have and~~ shall maintain its assets in this state, except for:

(a) real property and appurtenant personal property lawfully owned by the insurer and located outside this state; and

(b) property of the insurer that is customary, necessary, and convenient to enable and facilitate the

operation of its branch offices and regional home offices located outside this state as referred to in subsection (4).

(3) Removal of all or a material part of the records or assets of a domestic insurer from this state except pursuant to a plan of merger or consolidation approved by the commissioner under this code or for reasonable purposes and periods of time as may be approved by the commissioner in writing in advance is prohibited. Any person who removes or attempts to remove all or a material part of records or assets from the home office, other place of business, or safekeeping of the insurer in this state with the intent to remove the records or assets from this state or who conceals or attempts to conceal records or assets from the commissioner, in violation of this subsection, shall upon conviction be guilty of a felony punishable by a fine of not more than $10,000 or by imprisonment in the penitentiary for not more than 5 years or by both a fine and imprisonment in the discretion of the court. Upon any removal or attempted removal of records or assets or upon retention of records or assets or a material part of the records or assets outside this state beyond the period specified in the commissioner's consent under which the records were removed or upon concealment of or attempt to conceal records or assets in violation of this section, the commissioner may institute delinquency proceedings against the insurer pursuant to the provisions of chapter 2, part 13.

(4) This section does not prohibit or prevent an insurer from:

(a) establishing and maintaining branch offices or regional home offices in other states when necessary or convenient to the transaction of its business and keeping there the detailed records and assets customary and necessary for the servicing of its insurance in force and affairs in the territory served by the out-of-state office, as long as the records and assets are made readily available at that office for examination by the commissioner when requested;

(b) having, depositing, or transmitting funds and assets of the insurer in or to jurisdictions outside of this state as reasonably and customarily required in the regular course of its business;

(c) making deposits under custodial arrangements as provided by 33-2-604~~(3)~~(2).

(5) An insurer that fails to maintain records and make them available to the commissioner's staff is subject to the penalties and procedures in 33-1-317, 33-1-318, and 33-2-119."

Section 9. Section 33-4-302, MCA, is amended to read:

"33-4-302. Bylaws -- contents. (1) The bylaws of a farm mutual insurer must provide:

(a) for the liability of each member for payment of the expenses and losses of the insurer and for what

obligations must be given for the expenses and losses when a person applies for insurance;

(b) for the time when obligations of members for losses and expenses become due;

(c) for the limitation of liability of members for the payment of expenses and losses of the insurer;

(d) for the terms of office of the directors. At least part of the directors must be elected at each annual meeting of members. The term of any director may not be longer than 3 years.

(e) the ~~date~~ month of the annual meeting of the members, at which vacancies existing or occurring on the board of directors are to be filled by election by the members. Each member must be permitted to cast at least one vote, either in person or, if authorized in the bylaws, by proxy, for each director to be elected and may cumulate the member's votes for one or more directors, not exceeding the number to be elected.

(f) how directors are to be elected in case an election does not occur at the annual meeting or in event of resignation, disability, or death of a director;

(g) the manner and time of giving notice of annual and special meetings of members.

(2) The bylaws may provide:

(a) the character of property to be insured and under what restrictions and limitations;

(b) restrictions and limitations as to membership and the powers, duties, and obligations of the members other than as to obligations covered under subsection (1)(a);

(c) the manner of making and collecting assessments;

(d) the manner of the suspension and expulsion of members;

(e) the form of application and the form of policy;

(f) the manner of making proof, adjustment, and payment of losses;

(g) for who is authorized to adjust losses for the insurer;

(h) for arbitration, as provided in 33-4-411, in the event that the insurer's adjuster and any claimant cannot agree as to the amount of any insured damage or loss;

(i) the duties and compensation of the officers and the bonds to be required of them;

(j) the books and records to be kept by the insurer, the reports required of the officers, and the manner of examining and auditing their accounts;

(k) what must be contained on the corporate seal and when the seal is required to be used;

(l) other matters as may be considered necessary or convenient for the management of the affairs of the insurer."

SECTION 10. SECTION 33-10-104, MCA, IS AMENDED TO READ:

"33-10-104. Board of directors -- commissioner approval -- compensation. (1) The board of directors of the association consists of not less than seven or more than nine persons serving terms as established in the plan of operation. Two of the members must be appointed from the public at large by the commissioner. The other members of the board must be member insurers and must be selected by member insurers subject to the approval of the commissioner. Vacancies on the board must be filled for the remaining period of the term in the same manner as initial appointments.

(2) In approving selections to the board, the commissioner shall consider among other things whether all member insurers are fairly represented.

(3) Members of the board may be reimbursed from the assets of the association for expenses incurred by them as members of the board of directors."

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

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

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

(b) The term does not include a:

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

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

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

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

(v) claims examiner as defined in 39-71-116.

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

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

(b) The term does not include:

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

(ii) a union on behalf of its members;

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

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

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

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

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

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

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

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

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

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

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

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

~~(5)~~(4) (a) "Business entity" means a corporation, association, partnership, limited liability company, limited liability partnership, or other legal entity.

(b) The term does not include an individual.

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

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

~~(8)~~(7) "Home state" means the District of Columbia or any state or territory of the United States in which ~~the insurance producer:~~ a person licensed under this chapter

~~(a)~~ maintains a principal place of residence or a principal place of business~~; and~~

~~(b) is licensed as an insurance producer~~.

~~(9)~~(8) "Individual" means a natural person.

~~(10)~~(9) "Insurance producer", except as provided in 33-17-103, means a person required to be licensed under the laws of this state to sell, solicit, or negotiate insurance.

~~(11)~~(10) "Lapse" means the expiration of the license for failure to renew by the biennial renewal date.

~~(12)~~(11) "License" means a document issued by the commissioner that authorizes a person to act as an insurance producer for the lines of authority specified in the document. The license itself does not create actual, apparent, or inherent authority in the holder to represent or commit an insurer to a binding agreement.

~~(13)~~(12) "Limited line credit insurance" includes credit life insurance, credit disability insurance, credit property insurance, credit unemployment insurance, involuntary unemployment insurance, mortgage life insurance, mortgage guaranty insurance, mortgage disability insurance, gap insurance, and any other form of insurance offered in connection with an extension of credit that is limited to partially or wholly extinguishing the credit obligation and that the commissioner determines should be designated as a form of limited line credit insurance.

~~(14)~~(13) "Limited line credit insurance producer" means a person who sells, solicits, or negotiates one or more forms of limited line credit insurance coverage to individuals through a master, corporate, group, or individual policy.

~~(15)~~(14) "Limited lines insurance" means those lines of insurance that the commissioner finds necessary to recognize for the purposes of complying with 33-17-401(3).

~~(16)~~(15) "Limited lines producer" means a person authorized by the commissioner to sell, solicit, or

negotiate limited lines insurance.

~~(17)~~(16) "Lines of authority" means any kind of insurance as defined in Title 33.

~~(18)~~(17) "Negotiate" means the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms, or conditions of the contract if the person engaged in negotiation either sells insurance or obtains insurance from insurers for purchasers.

~~(19)~~(18) "Person" means an individual or a business entity.

~~(20)~~(19) "Public adjuster" means an adjuster employed by and ~~solely~~ representing the interests of the insured.

~~(21)~~(20) "Sell" means to exchange a contract of insurance by any means, for money or the equivalent, on behalf of an insurance company.

~~(22)~~(21) "Solicit" means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance.

~~(23)~~(22) "Suspend" means to bar the use of a person's license for a period of time.

~~(24) "Uniform application" means the national association of insurance commissioners' uniform application for resident and nonresident insurance producer licensing.~~

~~(25) "Uniform business entity application" means the national association of insurance commissioners uniform business entity application for resident and nonresident business entities.~~"

Section 12. Section 33-17-214, MCA, is amended to read:

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

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

(a) life insurance coverage on human lives, including benefits of endowment and annuities, and the coverage may include:

(i) funeral insurance as defined in 33-20-1501;

(ii) benefits in the event of death or dismemberment by accident; and

(iii) benefits for disability income;

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

(c) property insurance coverage for the direct or consequential loss or damage to property of every kind;

(d) casualty insurance coverage against legal liability, including liability for death, injury, or disability or damage to real or personal property;

(e) variable life and variable annuity products insurance coverage provided under variable life insurance contracts and variable annuities;

(f) personal lines of property and casualty insurance coverage sold to individuals and families for primarily noncommercial purposes;

(g) limited line credit insurance; or

(h) any other line of insurance permitted under Title 33.

(3) The license must state the name and primary business address of the licensee, personal identification number, date of issuance, general conditions relative to expiration or termination, kind of insurance covered, and other information that the commissioner considers necessary.

(4) The license of a business entity must also state the name of each individual authorized to exercise the license powers.

(5) Each license remains in effect~~,~~ unless it is suspended, revoked, or terminated or the license lapses.

(6) (a) A person shall inform the commissioner in writing within 30 days of:

(i) a change of address or a change of BUSINESS e-mail address;

(ii) the final disposition resulting in disciplinary action taken against or a conviction of the insurance producer in any state or federal jurisdiction or by another governmental agency in this state of:

(A) any administrative action related to transacting insurance;

(B) any action taken against any type of securities license; and

(C) any criminal action, excluding traffic violations.

(b) (i) As used in this subsection (6), "final disposition" includes but is not limited to a settlement agreement, consent order, plea agreement, sentence and judgment, or order.

(ii) The term does not include an action that is dismissed or that results in an acquittal, for which ~~no~~ a report is not necessary."

Section 13. Section 33-17-301, MCA, is amended to read:

"33-17-301. Adjuster license -- qualifications -- catastrophe adjustments -- public adjuster. (1) An individual may not act as or purport to be an adjuster in this state unless licensed as an adjuster under this chapter. An individual shall apply to the commissioner for an adjuster license in a form approved by the commissioner. The commissioner shall issue the adjuster license to individuals qualified to be licensed as an adjuster.

(2) To be licensed as an adjuster, the applicant:

(a) must be an individual 18 years of age or ~~more~~ older;

(b) (i) must be a resident of Montana or a resident of another state that permits residents of Montana regularly to act as adjusters in the other state; or

~~(ii) if not a resident of this state, shall designate a state in which the applicant does not maintain a residence or principal place of business as the applicant's designated home state if the applicant's state of residence or principal place of business does not offer adjuster licensure and the applicant would qualify for licensure in the designated home state as if the applicant were a resident of the designated home state;~~

(II) IF NOT A RESIDENT OF THIS STATE, SHALL DESIGNATE A HOME STATE IN WHICH THE ADJUSTER DOES NOT MAINTAIN A PLACE OF BUSINESS OR RESIDENCE IF:

(A) THE ADJUSTER'S PRINCIPAL STATE OF BUSINESS OR RESIDENCE DOES NOT OFFER ADJUSTER LICENSURE; AND

(B) THE ADJUSTER QUALIFIES FOR THE LICENSE AS IF THE ADJUSTER WERE A RESIDENT OF THE DESIGNATED HOME STATE;

(c) shall pass an adjuster licensing examination as prescribed by the commissioner and pay the fee pursuant to 33-2-708;

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

(e) shall submit to a licensing background examination that meets the requirements provided in 33-17-220; and

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

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

(4) An adjuster license or qualifications are not required for an adjuster who is sent into this state by and

on behalf of an insurer or adjusting business entity for the purpose of investigating or making adjustments of a particular loss under an insurance policy or for the adjustment of a series of losses resulting from a catastrophe common to all losses.

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

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

Section 14. Section 33-17-503, MCA, is amended to read:

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

(a) properly file with the office of the commissioner a written application in a form approved by the commissioner; and

(b) pay a fee pursuant to 33-2-708, which the commissioner shall forward to the state treasurer to be deposited in the state special revenue fund to the credit of the state auditor's office.

(2) To be licensed as a consultant, the prospective licensee:

(a) must be an individual 18 years of age or older; and

(b) (i) must be a resident of Montana or a resident of another state that permits residents of Montana regularly to act as consultants in the other state; or

~~(ii) if not a resident of this state, shall designate a state in which the prospective licensee does not maintain a residence or principal place of business as the prospective licensee's designated home state if the prospective licensee's state of residence or principal place of business does not offer consultant licensure and the prospective licensee would qualify for licensure in the designated home state as if the prospective licensee were a resident of the designated home state.~~

(II) IF NOT A RESIDENT OF THIS STATE, SHALL DESIGNATE A HOME STATE IN WHICH THE CONSULTANT DOES NOT MAINTAIN A PLACE OF BUSINESS OR RESIDENCE IF:

(A) THE CONSULTANT'S PRINCIPAL STATE OF BUSINESS OR RESIDENCE DOES NOT OFFER CONSULTANT LICENSURE; AND

(B) THE CONSULTANT QUALIFIES FOR THE LICENSE AS IF THE CONSULTANT WERE A RESIDENT OF THE

DESIGNATED HOME STATE.

~~(2)~~(3) A consultant license continues in force until lapsed, suspended, revoked, or terminated."

Section 15. Section 33-17-505, MCA, is amended to read:

"33-17-505. Qualification examination -- background examination. (1) (a) In order to determine the competency of an applicant for a consultant license, the commissioner shall require the applicant to pass an examination.

~~(2)~~(b) The commissioner may conduct the examination or make arrangements, including contracting with an outside testing service, for administering the examination and collecting the fees required by 33-17-503. The commissioner may arrange for the testing service to recover its cost of the examination from the applicant.

(2) The applicant shall submit to a licensing background examination that meets the requirements provided in 33-17-220."

Section 16. Section 33-17-1101, MCA, is amended to read:

"33-17-1101. Place of business -- display of license -- records. (1) A resident insurance producer shall maintain a place or places of business in this state accessible to the public. A nonresident insurance producer may maintain a place or places of business in this state. An insurance producer's place or places of business must be a place in which transactions are conducted under the insurance producer's license. The ~~street~~ address ~~or addresses~~ of the primary place ~~or places~~ of business must appear ~~upon~~ on the license. This section does not prohibit the maintenance of a place of business in a licensee's place of residence.

(2) The license or, if the insurance producer has more than one place of business, a copy of the license must be conspicuously displayed ~~in a place of business at the street address shown on the license~~ in a part of the place of business customarily open to the public.

(3) The insurance producer shall keep at a place of business complete records pertaining to transactions under the license for a period of at least 3 years after completion of the respective transactions, except that a title insurance producer, as defined in 33-25-105, shall retain records as provided in 33-25-214 and 33-25-216."

~~**SECTION 17.** SECTION 33-20-509, MCA, IS AMENDED TO READ:~~

~~**"33-20-509. Maturity date.** For the purpose of determining the benefits calculated under 33-20-507 and 33-20-508, in the case of annuity contracts under which an election may be made to have annuity payments~~

~~commence at optional maturity dates, the maturity date is the latest date for which election is permitted by the contract but may not be later than the anniversary of the contract next following the annuitant's 70th birthday or the 10th anniversary of the contract, whichever is later."~~

~~**Section 18.** Section 33-20-903, MCA, is amended to read:~~

~~**"33-20-903. Applicability.** (1) This part applies to all group and individual annuity contracts and certificates except:~~

~~(a) registered or nonregistered variable annuities or other registered products;~~

~~(b) immediate and deferred annuities that do not contain nonguaranteed~~ only guaranteed ~~elements;~~

~~(c) structured settlement annuities; and~~

~~(d) as provided in subsection (2), annuities used to fund:~~

~~(i) an employee pension plan that is covered by the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001, et seq.;~~

~~(ii) a plan described by section 401(a), 401(k), or 403(b) of the Internal Revenue Code, 26 U.S.C. 401(a), 401(k), or 403(b), when the plan, for purposes of the Employment Retirement Income Security Act of 1974, is established or maintained by an employer;~~

~~(iii) a governmental plan or church plan defined in section 414 of the Internal Revenue Code, 26 U.S.C. 414, or a deferred compensation plan of a state or local government or a tax-exempt organization under section 457 of the Internal Revenue Code, 26 U.S.C. 457; or~~

~~(iv) a nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor.~~

~~(2) (a) The provisions of this part apply to annuities used to fund a plan or arrangement when:~~

~~(i) the plan or arrangement is funded solely by contributions that an employee elects to make whether on a pretax or after-tax basis;~~

~~(ii) the insurer has been notified that plan participants may choose from among two or more fixed annuity providers; and~~

~~(iii) there is a direct solicitation of an individual employee by an insurance producer for the purchase of an annuity contract.~~

~~(b) As used in this subsection (2), direct solicitation does not include any meeting held by an insurance producer solely for the purpose of educating or enrolling employees in the plan or arrangement."~~

Section 17. Section 33-22-1811, MCA, is amended to read:

"33-22-1811. Availability of coverage -- required plans. (1) (a) As a condition of transacting business in this state with small employers, each small employer carrier must have approved for issuance to small employer groups at least two health benefit plans. ~~One plan must be a basic health benefit plan, and one plan must be a standard health benefit plan.~~

(b) (i) A small employer carrier shall issue all plans marketed under this part to any eligible small employer that applies for a plan and agrees to make the required premium payments and to satisfy the other reasonable provisions of the health benefit plan not inconsistent with this part.

(ii) In the case of a small employer carrier that establishes more than one class of business pursuant to 33-22-1808, the small employer carrier shall maintain and offer to eligible small employers all plans marketed under this part in each established class of business. A small employer carrier may apply reasonable criteria in determining whether to accept a small employer into a class of business, provided that:

(A) the criteria are not intended to discourage or prevent acceptance of small employers applying for a health benefit plan;

(B) the criteria are not related to the health status or claims experience of the small employers' employees;

(C) the criteria are applied consistently to all small employers that apply for coverage in that class of business; and

(D) the small employer carrier provides for the acceptance of all eligible small employers into one or more classes of business.

(iii) The provisions of subsection (1)(b)(ii) may not be applied to a class of business into which the small employer carrier is no longer enrolling new small businesses.

~~(c) A small employer carrier that elects not to comply with the requirements of subsections (1)(a) and (1)(b) may continue to provide coverage under health benefit plans previously issued to small employers in this state for a period of no more than 7 years from October 1, 1995, if the carrier:~~

~~(i) complies with all other applicable provisions of this part, except 33-22-1810, 33-22-1813, and subsections (2) through (4) of this section;~~

~~(ii) does not amend or alter the benefits and coverages of the previously issued health benefit plans unless required to do so by law or rule; and~~

~~(iii) complies with all applicable provisions of Public Law 104-191.~~

(2) (a) A small employer carrier shall, pursuant to 33-1-501, file the basic health benefit plans and the standard health benefit plans to be used by the small employer carrier.

(b) The commissioner may at any time, after providing notice and an opportunity for a hearing to the small employer carrier, disapprove the continued use by a small employer carrier of a basic or standard health benefit plan on the grounds that the plan does not meet the requirements of this part.

(3) Health benefit plans covering small employers must comply with the following provisions:

(a) A health benefit plan may not:

(i) because of a preexisting condition, deny, exclude, or limit benefits for a covered individual for losses incurred more than 12 months following the individual's enrollment date. A health benefit plan may not define a preexisting condition exclusion more restrictively than 33-22-140.

(ii) use a preexisting condition exclusion more restrictive than exclusions allowed under 33-22-514.

(b) A health benefit plan must waive any time period applicable to a preexisting condition exclusion or limitation period with respect to particular services for the period of time that an individual was previously covered by creditable coverage that provided benefits with respect to those services if the creditable coverage was continuous to a date not more than 63 days prior to the submission of an application for new coverage. A health benefit plan may determine waivers of time periods applicable to preexisting condition exclusions or limitations on the basis of prior coverage of benefits within each of several classes or categories as specified in regulations implementing Public Law 104-191, rather than as provided in this subsection (3)(b). This subsection (3)(b) does not preclude application of any waiting period applicable to all new enrollees under the health benefit plan.

(c) A health benefit plan may exclude coverage for late enrollees for 18 months or for an 18-month preexisting condition exclusion, provided that if both a period of exclusion from coverage and a preexisting condition exclusion are applicable to a late enrollee, the combined period may not exceed 18 months from the date on which the individual enrolls for coverage under the health benefit plan.

(d) (i) Requirements used by a small employer carrier in determining whether to provide coverage to a small employer, including requirements for minimum participation of eligible employees and minimum employer contributions, must be applied uniformly among all small employers that have the same number of eligible employees and that apply for coverage or receive coverage from the small employer carrier. For the purpose of meeting minimum participation requirements of groups of four or more, a small employer carrier may not consider employees who, because they are covered under another health plan, waive coverage under the small employer's

plan as part of the group of eligible employees. However, a small employer carrier may require at least two eligible employees to participate in a plan.

(ii) A small employer carrier may vary the application of minimum participation requirements and minimum employer contribution requirements only by the size of the small employer group.

(e) (i) If a small employer carrier offers coverage to a small employer, the small employer carrier shall offer coverage to all of the eligible employees of a small employer and their dependents. A small employer carrier may not offer coverage only to certain individuals in a small employer group or only to part of the group, except in the case of late enrollees as provided in subsection (3)(c).

(ii) A small employer carrier may not modify a plan marketed under this part with respect to a small employer or any eligible employee or dependent, through riders, endorsements, or otherwise, to restrict or exclude coverage for certain diseases or medical conditions otherwise covered by the health benefit plan.

(iii) A small employer carrier shall secure a waiver of coverage from each eligible employee who declines, at the sole discretion of the eligible employee, an offer of coverage under a health benefit plan provided by the small employer. The waiver must be signed by the eligible employee and must certify that the employee was informed of the availability of coverage under the health benefit plan and of the penalties for late enrollment. The waiver may not require the eligible employee to disclose the reasons for declining coverage.

(iv) A small employer carrier may not issue coverage to a small employer if the carrier or a producer for the carrier has evidence that the small employer induced or pressured an eligible employee to decline coverage due to the health status or risk characteristics of the eligible employee or of the dependents of the eligible employee.

(4) (a) A small employer carrier may not be required to offer coverage or accept applications pursuant to subsection (1) in the case of the following:

(i) to an employer whose employees do not work or reside within the small employer carrier's established geographic service area for a network plan, as defined in 33-22-140; or

(ii) within an area where the small employer carrier reasonably anticipates and demonstrates to the satisfaction of the commissioner that it will not have the capacity within its established geographic service area to deliver service adequately to the members of a group because of its obligations to existing group policyholders and enrollees. The small employer carrier may not deny coverage under this subsection unless the small employer carrier acts uniformly without regard to claims experience or health status-related factors of employers, employees, or dependents.

(b) A small employer carrier may not be required to provide coverage to small employers pursuant to subsection (1) for which the commissioner determines that the small employer carrier does not have the financial reserves necessary to underwrite additional coverage and that the small employer carrier has denied coverage of small employers uniformly throughout the state and without regard to the claims experience and health status-related factors of the applicant small employer groups. The small employer carrier exempted from providing coverage under this subsection may not offer coverage to small employer groups in this state for 180 days after the date on which coverage is denied or until the small employer carrier has demonstrated to the commissioner that the small employer carrier has sufficient financial reserves to underwrite additional coverage, whichever is later."

Section 18. 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) (a) "Eligible small employer" means an employer who is sponsoring or will sponsor a group health plan and who employed at least two but not more than nine employees during the preceding calendar year and who employs at least two but not more than nine 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.

(4) "Employee" means an eligible employee as defined in 33-22-1803.

(5) "Group health plan" means health insurance coverage offered in connection with a group health plan or health insurance coverage offered to an eligible group as described in 33-22-501.

(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 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.

(11) "Related employers" means:

(a) affiliates or affiliated entities or persons who directly or indirectly, through one or more intermediaries, control, are controlled by, or are under common control with a specified entity or person; ~~and~~ or

(b) entities or persons that are eligible to file a combined or joint tax return for purposes of state taxation.

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

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

Section 19. Section 33-28-104, MCA, is amended to read:

"33-28-104. Minimum capital surplus -- letter of credit. (1) A captive insurance company may not be issued a license unless it possesses and maintains unimpaired paid-in capital and surplus of:

(a) in the case of a pure captive insurance company, not less than $250,000;

(b) in the case of an industrial insured captive insurance company, including a captive risk retention ~~company~~ GROUP, not less than $500,000;

(c) in the case of an association captive insurance company, not less than $500,000;

(d) in the case of a special purpose captive insurance company, an amount determined by the commissioner after giving due consideration to the company's business plan, feasibility study, and pro forma documents, including the nature of the risks to be insured;

(e) in the case of a protected cell captive insurance company, not less than $500,000. However, if the protected cell captive insurance company does not assume any risks, the risks insured by the protected cells are homogenous, and if there are not more than 10 cells, the commissioner may reduce the amount required in this subsection (1)(e) to an amount not less than $250,000.

(f) in the case of a branch captive insurance company, not less than the applicable amount of capital and surplus required in subsections (1)(a) through (1)(e), as determined based upon the organizational form of the foreign captive insurance company. The minimum capital and surplus must be jointly held by the commissioner and the branch captive insurance company in a bank of the federal reserve system approved by the commissioner.

(g) in the case of a captive reinsurance company, not less than 50% of the capital that would be required for that type of captive insurance company.

(2) The commissioner may require additional capital and surplus based upon the type, volume, and nature of insurance business transacted.

(3) Capital and surplus may be in the form of cash, cash equivalent, or an irrevocable letter of credit issued by a bank chartered by the state of Montana or a member bank of the federal reserve system and approved by the commissioner."

Section 20. Section 33-28-202, MCA, is amended to read:

"33-28-202. Legal investments. (1) (a) An industrial insured captive insurance company, an association captive insurance company, and a captive risk retention group shall comply with the investment requirements contained in Title 33, chapter 12, and the rules promulgated in accordance with these provisions.

(b) The commissioner may approve the use of alternative reliable methods of valuation and rating.

(c) When a captive insurance company's admitted assets total less than $5 million, the commissioner may approve an investment of up to 20% of admitted assets in rated credit instruments in any one investment that meets the requirements of 33-12-303(1)(c).

(2) A pure captive insurance company or protected cell captive insurance company is not subject to any restrictions on allowable investments, except that the commissioner may prohibit or limit any investment that threatens the solvency or liquidity of the company.

(3) ~~Only a~~ ~~A pure~~ ANY captive insurance company ~~or protected cell captive insurance company~~ may make loans to ~~its parent company or~~ ANY OF ITS affiliates. Loans ~~to a parent company or any affiliate~~ may not be made without prior written approval of the commissioner and must be evidenced by a note in a form approved by the commissioner. Loans of minimum capital and surplus funds required by 33-28-104 are prohibited."

Section 21. Section 33-28-301, MCA, is amended to read:

"33-28-301. Protected cell captive insurance company. (1) One or more sponsors may form a protected cell captive insurance company, which may be incorporated or unincorporated.

(2) A protected cell captive insurance company formed or licensed under the provisions of this chapter is subject to the following:

(a) (i) A protected cell captive insurance company may establish one or more protected cells with the prior written approval of the commissioner of a plan of operation or amendments submitted by the protected cell captive insurance company with respect to each protected cell.

(ii) Upon the written approval of the commissioner of the plan of operation, which must include but is not limited to the specific business objectives and investment guidelines of the protected cell, the protected cell captive insurance company in accordance with the approved plan of operation may attribute to the protected cell insurance obligations with respect to its insurance business.

(iii) A protected cell must have its own distinct name or designation that must include the words "protected cell" or "incorporated cell".

(iv) The protected cell captive insurance company shall transfer all assets attributable to a protected cell to one or more separately established and identified protected cell accounts bearing the name or designation of that protected cell. Protected cell assets must be held in the protected cell accounts for the purpose of satisfying the obligations of that protected cell.

(v) An incorporated protected cell may be organized and operated in any form of business organization authorized by the commissioner. Each incorporated protected cell of a protected cell captive insurance company must be treated as a captive insurance company for purposes of this chapter, except for the application of 33-28-201. Unless otherwise permitted by the articles of incorporation or other organizational document of a protected cell captive insurance company, each incorporated protected cell of the protected cell captive insurance company must have the same directors, secretary, and registered office as the protected cell captive insurance company.

(b) All attributions of assets and liabilities between a protected cell and the protected cell captive insurance company's general account must be in accordance with the plan of operation and participant contracts approved by the commissioner. No other attribution of assets and liabilities may be made by a protected cell captive insurance company between the protected cell captive insurance company's general account and its protected cells. Any attribution of assets and liabilities between the general account and a protected cell must be in cash or in readily marketable securities with established market values.

(c) The creation of a protected cell does not create, with respect to that protected cell, a legal person separate from the protected cell captive insurance company unless the protected cell is an incorporated cell. Amounts attributed to a protected cell under this chapter, including assets transferred to a protected cell account, are owned by the protected cell, and the protected cell captive insurance company may not be a trustee or hold itself out to be a trustee with respect to those protected cell assets of that protected cell account. A protected cell captive insurance company may allow for a security interest to attach to protected cell assets or a protected cell account when the security interest is in favor of a creditor of the protected cell and is otherwise allowed under applicable law.

(d) This chapter may not be construed to prohibit the protected cell captive insurance company from contracting with or arranging for an investment adviser, commodity trading adviser, or other third party to manage the protected cell assets of a protected cell if all remuneration, expenses, and other compensation of the third party are payable from the protected cell assets of that protected cell and not from the protected cell assets of other protected cells or the assets of the protected cell captive insurance company's general account.

(e) (i) A protected cell captive insurance company shall establish administrative and accounting procedures necessary to properly identify the one or more protected cells of the protected cell captive insurance company and the protected cell assets and protected cell liabilities attributable to the protected cells. The directors of a protected cell captive insurance company shall keep protected cell assets and protected cell liabilities:

(A) separate and separately identifiable from the assets and liabilities of the protected cell captive insurance company's general account; and

(B) attributable to one protected cell separate and separately identifiable from protected cell assets and protected cell liabilities attributable to other protected cells.

(ii) If the provisions of this subsection (2)(e) are violated, the remedy of tracing is applicable to protected cell assets commingled with protected cell assets of other protected cells or the assets of the protected cell captive insurance company's general account. The remedy of tracing may not be construed as an exclusive remedy.

(f) When establishing a protected cell, the protected cell captive insurance company shall attribute to the protected cell assets with a value at least equal to the reserves attributed to that protected cell.

(3) Each protected cell must be accounted for separately on the books and records of the protected cell captive insurance company to reflect the financial condition and result of operations of the protected cell, including

but not limited to the net income or loss, dividends or other distributions to participants, and any other factor provided in the participant contract or required by the commissioner.

(4) The assets of a protected cell may not be chargeable with liabilities arising from any other insurance business of the protected cell captive insurance company.

(5) A sale, exchange, or other transfer of assets may not be made by a protected cell captive insurance company among any of its protected cells without the consent of the participants of each affected protected cell.

(6) A sale, exchange, transfer of assets, dividend, or distribution may not be made from a protected cell to a sponsor or a participant without the commissioner's prior written approval, which may not be given if the sale, exchange, transfer, dividend, or distribution would result in insolvency or impairment with respect to the protected cell.

(7) Each protected cell captive insurance company shall file annually with the commissioner any financial reports required by the commissioner and shall include, without limitation, accounting statements detailing the financial experience of each protected cell.

(8) Each protected cell captive insurance company shall notify the commissioner in writing within 20 business days from the time that a protected cell has become impaired or insolvent or is otherwise unable to meets its claim or expense obligations.

(9) A participant contract may not take effect without the commissioner's prior written approval.

(10) An addition of each new protected cell or the withdrawal of any participant of an existing protected cell constitutes a change in the business plan of the protected cell captive insurance company and may not be effective without the commissioner's prior written approval.

(11) The business written by a protected cell captive insurance company, with respect to each cell, must be~~:~~

~~(a)~~ fronted by an insurance company licensed under the laws of any state or approved by the commissioner~~;~~

~~(b) reinsured by a reinsurer authorized or approved by the commissioner; or~~

~~(c) secured by a trust fund in the United States for the benefit of policyholders and claimants, which must be funded by an irrevocable letter of credit or other asset that is acceptable to the commissioner, and with the following requirements:~~

~~(i) the amount of the security provided by the trust fund may not be less than the reserves associated with the liabilities that are not fronted or reinsured, including but not limited to reserves for losses that are~~

~~allocated for loss adjustment expenses, incurred but not reported losses, and unearned premiums for business written through the participant's protected cell;~~

~~(ii) the commissioner may require the protected cell captive insurance company to increase the funding of any trust;~~

~~(iii) if the form of security in the trust is a letter of credit, the letter of credit must be established, issued, or confirmed by a bank chartered in this state, a member of the federal reserve system, or a bank chartered by another state if that state-chartered bank is acceptable to the commissioner; and~~

~~(iv) the trust and trust instrument must be in a form and with terms approved by the commissioner~~.

(12) If a protected cell captive insurance company's business is reinsured, with respect to each cell it must be:

(a) reinsured by a reinsurer authorized or approved by the commissioner; or

(b) secured by a trust fund in the United States for the benefit of policyholders and claimants, which must be funded by an irrevocable letter of credit or other asset that is acceptable to the commissioner, and subject to the following:

(i) the amount of the security provided by the trust fund may not be less than the reserves associated with the liabilities that are not fronted or reinsured, including but not limited to reserves for losses that are allocated for loss adjustment expenses, incurred but not reported losses, and unearned premiums for business written through the participant's protected cell;

(ii) the commissioner may require the protected cell captive insurance company to increase the funding of any trust;

(iii) if the form of security in the trust is a letter of credit, the letter of credit must be established, issued, or confirmed by a bank chartered in this state, a member of the federal reserve system, or a bank chartered by another state if that state-chartered bank is acceptable to the commissioner; and

(iv) the trust and trust instrument must be in a form and with terms approved by the commissioner."

NEW SECTION. **SECTION 22. REPEALER.** THE FOLLOWING SECTION OF THE MONTANA CODE ANNOTATED IS REPEALED:

33-22-522. UNIFORM HEALTH BENEFIT PLAN -- GROUP.

NEW SECTION. **Section 23. Effective date.** [This act] is effective on passage and approval.

- END -