AN ACT REVISING THE REGULATORY AUTHORITY OVER MONTANA STATE FUND TO PROVIDE REGULATORY AND COMPLAINT PROCESSES UNDER THE INSURANCE COMMISSIONER THAT GENERALLY ARE APPLICABLE TO PRIVATE WORKERS' COMPENSATION INSURERS; PREVENTING THE INSURANCE COMMISSIONER FROM DISSOLVING OR SUSPENDING THE LICENSE OF STATE FUND; SUBJECTING THE RATEMAKING AUTHORITY OF THE STATE FUND'S BOARD OF DIRECTORS TO THE SAME REVIEW BY THE INSURANCE COMMISSIONER AS EXPERIENCED BY PRIVATE-SECTOR INSURERS; REVISING THE BUDGETING AND FINANCIAL REPORTING FUNCTIONS OF THE STATE FUND TO A CALENDAR YEAR BASIS; PROVIDING AN ENHANCED RISK-BASED CAPITAL MECHANISM TO ALERT THE INSURANCE COMMISSIONER TO POTENTIAL STATE FUND FINANCIAL INSTABILITY; PROVIDING REHABILITATION AUTHORITY TO THE INSURANCE COMMISSIONER FOR STATE FUND; REVISING REFERENCE TO EXCESSIVE RATES AS RELATED TO MARKET COMPETITION; REMOVING RATE REVIEW FROM THE LEGISLATIVE AUDITOR'S DUTIES; REMOVING BUDGETARY REVIEW FROM THE LEGISLATIVE FISCAL ANALYST'S DUTIES; PROVIDING FOR A TRANSITION; AMENDING SECTIONS 2-4-101, 17-1-102, 17-2-110, 33-1-102, 33-2-1902, 33-16-303, 33-16-1002, 33-16-1008, 33-16-1021, 33-16-1033, 33-16-1035, 39-71-2312, 39-71-2315, 39-71-2316, 39-71-2323, 39-71-2330, 39-71-2332, 39-71-2351, 39-71-2361, AND 39-71-2363, MCA; REPEALING SECTIONS 33-16-1024, 39-71-2314, AND 39-71-2362, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Operation of state fund as authorized insurer -- issuance of certificate of authority -- exceptions -- use of calendar year -- risk-based capital -- reporting requirements. (1) The state fund provided for in 39-71-2313 is an authorized insurer and, except as provided in this section, is subject to the provisions in Title 33 that are generally applicable to authorized workers' compensation insurers in this state and the provisions of Title 39, chapter 71, part 23.

(2) (a) The commissioner shall issue a certificate of authority to the state fund to write workers'

compensation insurance coverages, as provided in 39-71-2316, and except as otherwise provided in this section the requirements of Title 33, chapter 2, part 1, do not apply. The certificate of authority must be continuously renewed by the commissioner.

(b) The state fund shall pay the annual fee under 33-2-708, provide the surplus funds required under 33-2-109 and 33-2-110, and provide to the commissioner the available documentation and information that is provided by other insurers when applying for a certificate of authority under 33-2-115.

(c) The state fund is subject to the reporting requirements under 33-2-705 but is not subject to the tax on net premiums.

(3) (a) The state fund, as the guaranteed market for workers' compensation insurance for employers pursuant to 39-71-2313, is not subject to:

(i) formation requirements of an insurer under Title 33, chapter 3;

(ii) revocation or suspension of its certificate of authority under any provision of Title 33 or any order or any provision that requires forfeiture of state fund's obligation to insure employers as required in 39-71-2313;

(iii) liquidation or dissolution under Title 33;

(iv) participation in the guaranty association provided for in Title 33, chapter 10;

(v) 33-12-104; or

(vi) any assessment of punitive or exemplary damages.

(b) The state fund is subject to 33-16-1023, except as provided in 39-71-2316(1)(e), (1)(f), and (1)(g).

(4) State fund shall complete financial reporting and accounting on a calendar year basis.

(5) (a) If the state fund's risk-based capital falls below the company action level RBC as defined in 33-2-1902, the commissioner shall issue a report to the governor, the state fund board of directors, and to the legislature. If the legislature is not in session, the report must go to the economic affairs interim committee and to the legislative auditor. The report must provide a description of the RBC measurement, the regulatory implications of the state fund falling below the RBC criteria, and the state fund's corrective action plan. If the commissioner is reporting on a regulatory action level RBC event, the report must include the state fund's corrective action plan, results of any examination or analysis by the commissioner, and any corrective orders issued by the commissioner.

(b) If state fund fails to comply with any lawful order of the commissioner, the commissioner may initiate supervision proceedings under Title 33, chapter 2, part 13, against state fund. If state fund fails to comply with

the commissioner's lawful supervision order under this subsection (5)(b), the commissioner may institute rehabilitation proceedings under Title 33, chapter 2, part 13, only if the commissioner is petitioning for rehabilitation based on the grounds provided in 33-2-1321(1) or (2).

(6) The state fund shall annually transfer funds to the commissioner, out of its surplus, for all necessary staffing and related expenses for a full-time attorney licensed to practice law in Montana and a full-time examiner qualified by education, training, experience, and high professional competence to examine the state fund pursuant to Title 33, chapter 1, part 4, and this section. The attorney and examiner must be employees of the commissioner.

(7) For the purposes of this section, the term "guaranteed market" has the definition provided in 39-71-2312.

Section 2. Section 2-4-101, MCA, is amended to read:

"2-4-101. Short title -- purpose -- exception. (1) This chapter is known and may be cited as the "Montana Administrative Procedure Act".

(2) The purposes of the Montana Administrative Procedure Act are to:

(a) generally give notice to the public of governmental action and to provide for public participation in that action;

(b) establish general uniformity and due process safeguards in agency rulemaking, legislative review of rules, and contested case proceedings;

(c) establish standards for judicial review of agency rules and final agency decisions; and

(d) provide the executive and judicial branches of government with statutory directives.

(3) Effective July 1, 2016, this chapter does not apply to the operations of the state compensation insurance fund provided for in Title 39, chapter 71, part 23. Administrative rules adopted by the state fund board of directors prior to July 1, 2016, apply to new and renewal policies issued by state fund that are effective prior to July 1, 2016. State fund is subject to rules adopted by any agency that by law apply to state fund."

Section 3. Section 17-1-102, MCA, is amended to read:

"17-1-102. Uniform accounting system and expenditure control. (1) The department shall establish a system of financial control so that the functioning of the various agencies of the state may be improved,

duplications of work by different state agencies and employees may be eliminated, public service may be improved, and the cost of government may be reduced.

(2) The department shall prescribe and install a uniform accounting and reporting system for all state agencies and institutions, reporting the receipt, use, and disposition of all public money and property in accordance with generally accepted accounting principles.

(3) The uniform accounting and reporting system must contain three levels of expenditure. The first level must include general categories, such as personal services, operating expenses, equipment, capital outlay, local assistance, grants, benefits and claims, transfers, and debt service. The second level of expenditure must include specific categories of expenditures within each first-level category. The third level of expenditure must include specific items of expenditure within each category of the second level.

(4) (a) ~~All~~ Except as provided in subsection (4)(b), all state agencies, including units of the university system but excluding community colleges, shall input all necessary transactions to the accounting system prescribed in subsection (2) before the accounts are closed at the end of the fiscal year in order to present the receipt, use, and disposition of all money and property for which the agency is accountable in accordance with generally accepted accounting principles, except that for budgetary control purposes, encumbrances that are required by generally accepted accounting principles to be reported as a reservation of fund balance must be recorded as expenditures and liabilities on the accounting records in accordance with the following requirements:

~~(a)~~(i) Goods and services, grants, and local assistance that are paid for with the general fund, in whole or in part, may be encumbered. The general fund encumbrances must be reviewed by the department, and a specific extension plan must be presented by the encumbering agency to the department prior to the fiscal yearend. If a valid extension plan is not received and approved, the department shall delete the encumbrance at fiscal yearend. The department shall present a fiscal yearend report to the office of budget and program planning and to the legislative fiscal analyst on each general fund encumbrance remaining at fiscal yearend. The report must be provided in an electronic format.

~~(b)~~(ii) Nongeneral fund encumbrances also require a valid extension plan approved by the department at the end of each fiscal year. After 3 years, approved extensions must be included by the department in its fiscal yearend report to the office of budget and program planning and to the legislative finance committee.

(b) The state fund provided for in Title 39, chapter 71, part 23, shall report on a calendar year basis."

Section 4. Section 17-2-110, MCA, is amended to read:

"17-2-110. Fiscal year and financial reports. (1) ~~The~~ Except for the state fund, provided for in Title 39, chapter 71, part 23, the fiscal year for state purposes commences on July 1 of each year and ends on June 30 of each year. The state fund's fiscal year starts on January 1 of each year and ends on December 31 of that same year.

(2) At the end of each fiscal year, the fiscal records of each state office, department, bureau, commission, institution, university unit, and agency ~~(collectively referred to as "state agency")~~, collectively referred to as "state agency", must be closed. Each state agency shall prepare the financial records and reconciliations for the fiscal year as the department of administration may prescribe. The financial reports of the uniform accounting and reporting system prescribed in 17-1-102(2) are to be completed and distributed not more than 31 days following the end of each fiscal year. The department of administration may extend this time limit if a state agency can show necessity for the extension.

(3) The reports are to be distributed to the department of administration and the legislative auditor and any other state agency that the department of administration may prescribe. It is the intent of this provision that these reports accurately and comprehensively present the financial activities of the reporting state agency in accordance with generally accepted accounting principles so that the reports can be effectively used by the executive and legislative branches of state government.

(4) Upon consolidation of the reports, the annual financial report by the department of administration must be available for other individuals and organizations interested in the financial affairs of the state of Montana."

Section 5. Section 33-1-102, MCA, is amended to read:

"33-1-102. (Temporary) Compliance required -- exceptions -- health service corporations -- health maintenance organizations -- governmental insurance programs -- service contracts. (1) A person may not transact a business of insurance in Montana or a business relative to a subject resident, located, or to be performed in Montana without complying with the applicable provisions of this code.

(2) The provisions of this code do not apply with respect to:

(a) domestic farm mutual insurers as identified in chapter 4, except as stated in chapter 4;

(b) domestic benevolent associations as identified in chapter 6, except as stated in chapter 6; and

(c) fraternal benefit societies, except as stated in chapter 7.

(3) This code applies to health service corporations as prescribed in 33-30-102. The existence of the corporations is governed by Title 35, chapter 2, and related sections of the Montana Code Annotated.

(4) Except as provided in Title 33, chapter 40, part 1, this code does not apply to health maintenance organizations to the extent that the existence and operations of those organizations are governed by chapter 31.

(5) This code does not apply to workers' compensation insurance programs provided for in Title 39, chapter 71, ~~parts~~ part 21 ~~and 23~~, and related sections.

(6) The department of public health and human services may limit the amount, scope, and duration of services for programs established under Title 53 that are provided under contract by entities subject to this title. The department of public health and human services may establish more restrictive eligibility requirements and fewer services than may be required by this title.

(7) This code does not apply to the state employee group insurance program established in Title 2, chapter 18, part 8, or the Montana university system group benefits plans established in Title 20, chapter 25, part 13.

(8) This code does not apply to insurance funded through the state self-insurance reserve fund provided for in 2-9-202.

(9) (a) Except as otherwise provided in Title 33, chapter 22, this code does not apply to any arrangement, plan, or interlocal agreement between political subdivisions of this state in which the political subdivisions undertake to separately or jointly indemnify one another by way of a pooling, joint retention, deductible, or self-insurance plan.

(b) Except as otherwise provided in Title 33, chapter 22, this code does not apply to any arrangement, plan, or interlocal agreement between political subdivisions of this state or any arrangement, plan, or program of a single political subdivision of this state in which the political subdivision provides to its officers, elected officials, or employees disability insurance or life insurance through a self-funded program.

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

(b) A "service contract" means a contract or agreement for a separately stated consideration for a specific duration to perform the repair, replacement, or maintenance of property or to indemnify for the repair, replacement, or maintenance of property if an operational or structural failure is due to a defect in materials or manufacturing or to normal wear and tear, with or without an additional provision for incidental payment or

indemnity under limited circumstances, including but not limited to towing, rental, and emergency road service. A service contract may provide for the repair, replacement, or maintenance of property for damage resulting from power surges or accidental damage from handling. A service contract does not include motor club service as defined in 61-12-301.

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

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

(12) Except as provided in Title 33, chapter 40, part 1, this code does not apply to the self-insured student health plan established in Title 20, chapter 25, part 14.

(13) This code does not apply to private air ambulance services that are in compliance with 50-6-320 and that solicit membership subscriptions, accept membership applications, charge membership fees, and provide air ambulance services to subscription members and designated members of their households.

(14) This code does not apply to guaranteed asset protection waivers that are governed by 30-14-151 through 30-14-157. (Terminates December 31, 2017--sec. 14, Ch. 363, L. 2013.)

33-1-102. (Effective January 1, 2018) Compliance required -- exceptions -- health service corporations -- health maintenance organizations -- governmental insurance programs -- service contracts. (1) A person may not transact a business of insurance in Montana or a business relative to a subject resident, located, or to be performed in Montana without complying with the applicable provisions of this code.

(2) The provisions of this code do not apply with respect to:

(a) domestic farm mutual insurers as identified in chapter 4, except as stated in chapter 4;

(b) domestic benevolent associations as identified in chapter 6, except as stated in chapter 6; and

(c) fraternal benefit societies, except as stated in chapter 7.

(3) This code applies to health service corporations as prescribed in 33-30-102. The existence of the corporations is governed by Title 35, chapter 2, and related sections of the Montana Code Annotated.

(4) This code does not apply to health maintenance organizations to the extent that the existence and operations of those organizations are governed by chapter 31.

(5) This code does not apply to workers' compensation insurance programs provided for in Title 39,

chapter 71, ~~parts~~ part 21 ~~and 23~~, and related sections.

(6) The department of public health and human services may limit the amount, scope, and duration of services for programs established under Title 53 that are provided under contract by entities subject to this title. The department of public health and human services may establish more restrictive eligibility requirements and fewer services than may be required by this title.

(7) This code does not apply to the state employee group insurance program established in Title 2, chapter 18, part 8, or the Montana university system group benefits plans established in Title 20, chapter 25, part 13.

(8) This code does not apply to insurance funded through the state self-insurance reserve fund provided for in 2-9-202.

(9) (a) Except as otherwise provided in Title 33, chapter 22, this code does not apply to any arrangement, plan, or interlocal agreement between political subdivisions of this state in which the political subdivisions undertake to separately or jointly indemnify one another by way of a pooling, joint retention, deductible, or self-insurance plan.

(b) Except as otherwise provided in Title 33, chapter 22, this code does not apply to any arrangement, plan, or interlocal agreement between political subdivisions of this state or any arrangement, plan, or program of a single political subdivision of this state in which the political subdivision provides to its officers, elected officials, or employees disability insurance or life insurance through a self-funded program.

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

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

(11) (a) Subject to 33-18-201 and 33-18-242, this code does not apply to insurance for ambulance

services sold by a county, city, or town or to insurance sold by a third party if the county, city, or town is liable for the financial risk under the contract with the third party as provided in 7-34-103.

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

(12) This code does not apply to the self-insured student health plan established in Title 20, chapter 25, part 14.

(13) This code does not apply to private air ambulance services that are in compliance with 50-6-320 and that solicit membership subscriptions, accept membership applications, charge membership fees, and provide air ambulance services to subscription members and designated members of their households.

(14) This code does not apply to guaranteed asset protection waivers that are governed by 30-14-151 through 30-14-157."

Section 6. Section 33-2-1902, MCA, is amended to read:

"33-2-1902. Definitions. As used in this part, the following definitions apply:

(1) "Adjusted RBC report" means an RBC report that has been adjusted by the commissioner in accordance with 33-2-1903(5).

(2) "Corrective order" means an order issued by the commissioner specifying corrective actions that the commissioner has determined are required.

(3) "Domestic insurer" means any insurance company domiciled in this state.

(4) "Foreign insurer" means any insurance company licensed to do business in this state under 33-2-116 but not domiciled in this state.

(5) "Life or disability insurer" means:

(a) any insurance company licensed under 33-2-116 and engaged in the business of entering into contracts of disability insurance, as described in 33-1-207, or life insurance, as described in 33-1-208;

(b) a licensed property and casualty insurer writing only disability insurance; or

(c) any insurer engaged solely in the business of reinsurance of life or disability contracts.

(6) "NAIC" means the national association of insurance commissioners.

(7) "Negative trend" means, with respect to a life or health insurer, a negative trend over a period of time, as determined in accordance with the trend test calculation included in the RBC instructions.

(8) (a) "Property and casualty insurer" means:

(i) any insurance company licensed under 33-2-116 and engaged in the business of entering into contracts of property insurance, as described in 33-1-210, or casualty insurance, as described in 33-1-206;

(ii) any insurance company engaged solely in the business of reinsurance of property and casualty contracts; or

(iii) any insurance company engaged in the business of surety and marine insurance.

(b) The term does not include monoline mortgage guaranty insurers, financial guaranty insurers, and title insurers.

(9) "RBC instructions" means the RBC report, including risk-based capital instructions adopted by the NAIC, as the RBC instructions may be amended by the NAIC from time to time in accordance with the procedures adopted by the NAIC.

(10) "RBC level" means an insurer's authorized control level RBC, company action level RBC, mandatory control level RBC, or regulatory action level RBC, ~~where~~ in which:

(a) "authorized control level RBC" means the number determined under the risk-based capital formula in accordance with the RBC instructions;

(b) (i) "company action level RBC" means, with respect to any insurer except state fund as provided in subsection (10)(b)(ii), the product of 2 and its authorized control level RBC;

(ii) "company action level RBC" for state fund is the product of 4 and its authorized control level RBC;

(c) "mandatory control level RBC" means the product of 0.70 and the authorized control level RBC; and

(d) (i) "regulatory action level RBC" means, except for the state fund as provided in subsection (10)(d)(ii), the product of 1.5 and its authorized control level RBC.

(ii) "regulatory action level RBC" for state fund is the product of 3 and its authorized control level RBC.

(11) "RBC plan" means a comprehensive financial plan containing the elements specified in 33-2-1904(2). If the commissioner rejects the RBC plan and it is revised by the insurer, with or without the commissioner's recommendation, the plan must be called a revised RBC plan.

(12) "RBC report" means the report required in 33-2-1903.

(13) "Total adjusted capital" means the sum of:

(a) an insurer's statutory capital and surplus; and

(b) other items, if any, as the RBC instructions may provide."

Section 7. Section 33-16-303, MCA, is amended to read:

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

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

Section 8. Section 33-16-1002, MCA, is amended to read:

"33-16-1002. Applicability of part. This part, together and in conjunction with parts 1 through 4 of this chapter, applies to the making of premium rates for workers' compensation insurance issued under compensation plan No. 2 and plan No. 3 of the Workers' Compensation Act, Title 39, chapter 71, part 22 and part 23, respectively, or related employer's liability insurance, but does not apply to reinsurance."

Section 9. Section 33-16-1008, MCA, is amended to read:

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

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

(2) (a) "Advisory organization" means a person or organization that either has two or more member insurers or is controlled either directly or indirectly by two or more insurers and that assists insurers in

ratemaking-related activities.

(b) The term does not include a joint underwriting association, any actuarial or legal consultant, or any employee of an insurer or insurers under common control or management or their employees or manager. ~~As used in~~ For the purposes of this subsection (2)(b), two or more insurers who have a common ownership or operate in this state under common control or management ~~or control~~ constitute a single insurer.

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

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

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

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

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

(8) "Insurer" means a person licensed to write workers' compensation insurance as a plan No. 2 insurer or plan No. 3, the state fund, under the laws of the state.

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

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

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

ascertained by accepted actuarial standards.

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

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

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

(b) The term does not include minimum premiums.

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

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

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

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

Section 10. Section 33-16-1021, MCA, is amended to read:

"33-16-1021. Ratemaking standards -- review by commissioner. (1) Rates may not be excessive, inadequate, or unfairly discriminatory.

(2) (a) ~~Rates~~ Except as provided in subsection (2)(b), rates in a competitive market are not excessive. Rates in a noncompetitive market are excessive if they are likely to produce a long-run profit that is unreasonably high in relation to services rendered.

(b) Rates for state fund may not be determined to be excessive unless the rate clearly is likely to produce an excess of assets over what is reasonably necessary to pay developed losses, contingencies, expenses, and

a reasonable level of surplus.

(3) A rate may not be determined to be inadequate unless:

(a) ~~it~~ the rate is clearly insufficient to sustain projected losses and expenses;

(b) the rate is unreasonably low and the use of the rate by the insurer has had or, if continued, will tend to create a monopoly in the market; or

(c) funds equal to the full, ultimate cost of anticipated losses and loss adjustment expenses are not produced when prospective loss costs are applied to anticipated payrolls.

(4) Unfair discrimination exists if, after allowing for practical limitations, price differentials fail to reflect equitably the differences in expected losses and expenses. A rate is not unfairly discriminatory because different premiums result for policyholders with different loss exposures or expense levels.

(5) In determining whether rates comply with standards under subsection (1), consideration must be given to:

(a) past and prospective loss experience within and outside Montana, in accordance with accepted actuarial principles;

(b) catastrophe hazards and contingencies;

(c) past and prospective expenses within and outside Montana;

(d) loadings for leveling premium rates over time for dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers;

(e) a reasonable margin for underwriting profit; and

(f) all other relevant factors within and outside Montana.

(6) The systems of expense provisions included in the rates for use by an insurer or group of insurers may differ from those of any other insurer or group of insurers to reflect the requirements of the operating methods of the insurer or group of insurers.

(7) The rate may contain provisions of contingencies and an allowance permitting a reasonable profit. In determining the reasonableness of a profit, consideration must be given to all investment income attributable to premiums and the reserves associated with those premiums.

(8) The commissioner may investigate and determine whether rates in Montana are excessive, inadequate, or unfairly discriminatory. In any investigation and determination, the commissioner shall also consider the factors specified in 33-16-1020."

Section 11. Section 33-16-1033, MCA, is amended to read:

"33-16-1033. Advisory organization -- permitted activity. An advisory organization may:

(1) develop statistical plans, including class definitions;

(2) collect statistical data from members, subscribers, or any other source;

(3) prepare and distribute pure premium rate data, adjusted for loss development and loss trending, in accordance with its statistical plan. The data and adjustments must be in sufficient detail to permit insurers to modify pure premiums based upon their own rating methods or interpretations of underlying data.

(4) prepare and distribute manuals for rating rules and rating schedules that do not contain any rules or schedules, including final rates, without information outside the manuals;

(5) distribute information that is filed with the commissioner and open to public inspection;

(6) conduct research and collect statistics in order to discover, identify, and classify information relating to causes or prevention of losses;

(7) prepare and file policy forms and endorsements and consult with members, subscribers, and others relative to their use and application;

(8) collect, compile, and distribute past and current prices of individual insurers, if the information is made available to the general public;

(9) conduct research and collect information to determine the impact of benefit level changes on pure premium rates;

(10) prepare and distribute rules and rating values for the uniform experience rating plan; and

(11) calculate and disseminate individual risk premium modification factors. Individual risk premium modification factors may only be disseminated to:

(a) a licensed producer or ~~a plan No. 2 or plan No. 3~~ an insurer for the business of insurance only; and

(b) the department of labor and industry for regulatory purposes only. Individual employer payroll and loss information may be provided to a person other than the current licensed producer or ~~a plan No. 2 or plan No. 3~~ an insurer only after obtaining the employer's written permission."

Section 12. Section 33-16-1035, MCA, is amended to read:

"33-16-1035. Penalties -- suspension of license. (1) The commissioner may impose upon a person

or organization that violates 33-16-1020 through 33-16-1023 or 33-16-1025 through 33-16-1036 a penalty of not more than $500 for each violation.

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

(3) The commissioner may suspend the license of an insurer or an advisory organization that fails to comply with any order within the time set by the order or extension granted by the commissioner. The commissioner may not suspend a license for failure to comply with an order until the time prescribed for appeal from the order has expired or, if appealed, until the order has been affirmed. The commissioner may determine the period of a suspension, which remains in effect for the period unless modified or rescinded or until the order upon which the suspension is based is modified, rescinded, or reversed.

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

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

Section 13. Section 39-71-2312, MCA, is amended to read:

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

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

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

~~(2)~~(3) "Executive director" means the chief executive officer of the state compensation insurance fund.

(4) "Fiscal year" means for the purposes of state fund under Title 33 and this part the period from January 1 in one year to December 31 of that same year. A fiscal year for the purposes of assessments under Title 39, chapter 71, is as defined in 39-71-116.

(5) "Guaranteed market" means the insurer that is required to insure any employer in this state who requests to insure their liability for workers' compensation and occupational disease coverage and the insurer

may not refuse to provide coverage unless an employer or the employer's principals have defaulted on an obligation and the default remains unsatisfied.

~~(3)~~(6) "State fund" means the state compensation insurance fund provided for in 39-71-2313 that serves as the guaranteed market for this state. It is also known as compensation plan No. 3 or plan No. 3."

Section 14. Section 39-71-2315, MCA, is amended to read:

"39-71-2315. Management of state fund -- powers and duties of the board -- business plan required. (1) The management and control of the state fund is vested ~~solely~~ in the board, subject to the statutory limitations imposed by this part.

(2) The board is vested with full power, authority, and jurisdiction over the state fund except that the board may not dissolve or liquidate the state fund. ~~The~~ To fulfill the objectives and intent of this part, the board may perform all acts necessary or convenient in the exercise of any power, authority, or jurisdiction over the ~~state fund, either in the~~ administration of the state fund or in connection with the insurance business to be carried on under the provisions of this part, as fully and completely as the governing body of a private mutual insurance carrier and subject to the regulatory authority of the insurance commissioner in Title 33, except as provided in [section 1]~~, in order to fulfill the objectives and intent of this part~~.

(3) ~~Bonds may not be issued by~~ Neither the board, the state fund, ~~or~~ nor the executive director may issue bonds on behalf of the state fund.

~~(3)~~(4) (a) The board shall adopt a business plan no later than ~~June 30~~ December 31 for the next fiscal year.

(b) At a minimum, the plan must include:

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

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

~~(4)~~(5) The business plan must be available upon request to the general public for a fee not to exceed the actual cost of publication. However, performance goals relating to a specific employment position are confidential and not available to the public.

~~(5)~~(6) No sooner than ~~July~~ January 1 or later than ~~October~~ March 31, the board shall convene a public meeting to review the performance of the state fund, using the business plan for comparison of all the established goals and targets. The board shall publish, by ~~November~~ May 30 of each year, a report of the state fund's actual performance as compared to the business plan.

~~(6)~~(7) The state fund board of directors shall establish in-house guidelines for procurement of insurance-related services and shall include guidelines for the solicitation of submissions of information regarding insurance-related services from more than one vendor. The board may include guidelines for the circumstances when business necessity or expedience may preclude the solicitation of submissions from more than one vendor. The board may also include in the guidelines the exemptions to the procurement process in 18-4-132."

Section 15. Section 39-71-2316, MCA, is amended to read:

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

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

(b) sue and be sued;

(c) enter into contracts relating to the administration of the state fund, including claims management, servicing, and payment;

(d) collect and disburse money received;

(e) ~~adopt classifications~~ except as provided in subsection (1)(f), use the uniform classification system as required in 33-16-1023 and charge premiums for the classifications so that the state fund will be neither more nor less than self-supporting. ~~Premium rates for classifications may be adopted and changed only by using a process, a procedure, formulas, and factors set forth in rules adopted under Title 2, chapter 4, parts 2 through 4. After the rules have been adopted, the state fund need not follow the rulemaking provisions of Title 2, chapter 4, when changing classifications and premium rates. The contested case rights and provisions of Title 2, chapter 4, do not apply to an employer's classification or premium rate. The state fund is required to belong to a licensed workers' compensation advisory organization or a licensed workers' compensation rating organization under Title 33, chapter 16, part 4, and may use the classifications of employment adopted by the designated workers'~~

~~compensation advisory organization, as provided in Title 33, chapter 16, part 10, and corresponding rates as a basis for setting its own rates. Except as provided in Title 33, chapter 16, part 10, a workers' compensation advisory organization or a licensed workers' compensation rating organization under Title 33, chapter 16, part 4, or other person may not, without first obtaining the written permission of the employer, use, sell, or distribute an employer's specific payroll or loss information, including but not limited to experience modification factors.~~

(f) continue the use of special classification codes that were in use prior to [the effective date of this act] for agriculture, municipalities, towns, cities, counties, and state agencies. The board shall file with the commissioner rates and supplementary rate information for these special classifications.

(g) use the uniform experience rating plan provided for in 33-16-1023, except upon approval of the board adopt experience modification thresholds for use by state fund for its insured employers;

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

~~(g)~~(i) hire personnel;

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

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

~~(j)~~(l) upon approval of the board, contract with licensed resident insurance producers;

~~(k)~~(m) upon approval of the board, enter into agreements with licensed workers' compensation insurers, insurance associations, or insurance producers to provide workers' compensation coverage in other states to Montana-domiciled employers insured with the state fund;

~~(l)~~(n) upon approval of the board, expend funds for scholarship, educational, or charitable purposes;

~~(m)~~(o) upon approval of the board, including terms and conditions, provide employers coverage under the federal Longshore and Harbor Workers' Compensation Act, 33 U.S.C. 901, et seq., the federal Merchant Marine Act, 1920 (Jones Act), 46 U.S.C. 688, and the federal Employers' Liability Act, 45 U.S.C. 51, et seq.;

~~(n)~~(p) perform all functions and exercise all powers of a private insurance carrier that are necessary, appropriate, or convenient for the administration of the state fund.

(2) The state fund shall include a provision in every policy of insurance issued pursuant to this part that incorporates the restriction on the use and transfer of money collected by the state fund as provided for in 39-71-2320."

Section 16. Section 39-71-2323, MCA, is amended to read:

"39-71-2323. Surplus in state fund -- payment of dividends. Subject to the provisions of 39-71-2316, if at the end of any fiscal year there exists in the state fund account created by 39-71-2321 for claims for injuries resulting from accidents that occur on or after July 1, 1990, an excess of assets over liabilities, including necessary reserves and an appropriate surplus as determined by the board in accordance with 39-71-2330, and if the excess may be refunded safely, then the board, after consultation with the independent actuary engaged pursuant to 39-71-2330, may declare a dividend. The ~~rules of the~~ state fund must prescribe the manner of payment to those employers who have paid premiums into the state fund in excess of liabilities."

Section 17. Section 39-71-2330, MCA, is amended to read:

"39-71-2330. Rate setting -- surplus -- multiple rating tiers. (1) The board has the authority to establish the rates to be charged by the state fund ~~for insurance~~ and the supplementary rate information to determine the applicable premium as provided in 39-71-2311 and 39-71-2316 and shall file the rates and supplementary rate information with the commissioner as provided in Title 33, chapter 16. The board shall engage the services of an independent actuary who is a member in good standing with the American academy of actuaries to develop and recommend actuarially sound rates. Rates must be set at amounts sufficient, when invested, to carry the estimated cost of all claims to maturity, to meet the reasonable expenses of conducting the business of the state fund, and to amass and maintain an excess of surplus over the amount produced by the national association of insurance commissioners' risk-based capital requirements for a casualty insurer.

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

(3) The board may ~~implement~~ establish multiple rating tiers for classifications that take into consideration losses, premium size, and other factors relevant in placing an employer within a rating tier. The board shall file any multiple rating tiers with the commissioner for review as provided in Title 33, chapter 16."

Section 18. Section 39-71-2332, MCA, is amended to read:

"39-71-2332. Pooled risk safety group. (1) ~~The~~ Subject to Title 33, chapter 16, the state fund may establish one or more groups of individual policies in a pooled risk safety group to promote safety as a way to reduce losses among members of the pooled risk safety group.

(2) Each member of a pooled risk safety group must be eligible as provided in 39-71-2331 and must have an individual workers' compensation plan No. 3 policy. An individual policy may be included in only one group.

(3) The state fund shall annually establish the terms and conditions of the plan that defines the requirements of participation for a pooled risk safety group. The plan must include the criteria to be eligible for an aggregate return of premium and a method for apportioning the return of premium among members of the group.

(4) The aggregate record of the individual members of the pooled risk safety group is the basis for determining if the members of the pooled risk safety group qualify for a return on premiums."

Section 19. Section 39-71-2351, MCA, is amended to read:

"39-71-2351. Purpose of separation of state fund liability as of July 1, 1990, and of separate funding of claims before and on or after that date. ~~(1) An unfunded liability exists in the state fund. It has existed since at least the mid-1980s and has grown each year. There have been numerous attempts to solve the problem by legislation and other methods. These attempts have alleviated the problem somewhat, but the problem has not been solved.~~

~~(2)~~(1) The legislature has determined that it is necessary to the public welfare to make workers' compensation insurance available to all employers through the state fund as the ~~insurer of last resort~~ guaranteed market. In previous years of making this insurance available, and prior to July 1, 1990, the state fund ~~has~~ incurred ~~the~~ an unfunded liability. The legislature ~~has~~ determined that the most cost-effective and efficient way to provide a source of funding for and to ensure payment of the unfunded liability and the best way to administer the unfunded liability ~~is~~ was to separate the liability of the state fund on the basis of whether a claim is for an injury resulting from an accident that occurred before July 1, 1990, or an accident that occurs on or after that date.

~~(3)~~(2) The legislature further determines that in order to prevent the creation of a new unfunded liability with respect to claims for injuries for accidents that occur on or after July 1, 1990, certain duties of the state fund should be clarified and ~~legislative oversight~~ regulation of the state fund, effective January 1, 2016, and subject to [section 1], should be ~~increased~~ under Title 33, which governs plan No. 2 and plan No. 3 insurers operating

in this state."

Section 20. Section 39-71-2361, MCA, is amended to read:

"39-71-2361. Legislative audit of state fund ~~-- annual review of audit and rate review by insurance commissioner~~. The legislative auditor shall annually~~:~~

~~(1)~~ conduct or have conducted by persons appointed under 5-13-305 a financial and compliance audit of the state fund, including its operations relating to claims for injuries resulting from accidents that occurred before July 1, 1990. The audit must include evaluations of ~~the claims reservation process,~~ the amounts reserved~~, and the current report of the state fund's actuary~~. The evaluations may be conducted by persons appointed under 5-13-305. Audit and evaluation costs are an expense of and must be paid by the state fund and must be allocated between those claims for injuries resulting from accidents that occurred before July 1, 1990, and those claims for injuries resulting from accidents that occur on or after that date.

~~(2) provide the results of the financial and compliance audit for operations related to claims for injuries resulting from accidents on or after July 1, 1990, as provided in subsection (1), and the rate review as provided in 39-71-2362 to the insurance commissioner. The insurance commissioner shall review the financial and compliance audit and rate review and report any concerns or recommendations based on the review to the governor, the legislative audit committee, and the economic affairs interim committee.~~"

Section 21. Section 39-71-2363, MCA, is amended to read:

"39-71-2363. Agency law -- ~~submission of budget --~~ annual report. (1) The state fund is subject to state laws applying to state agencies, except as otherwise provided by law, and it is exempt from the provisions of The Legislative Finance Act in Title 5, chapter 12, and the provisions of Title 17, chapter 7, parts 1 through 4. The state fund may use the debt collection procedures provided in Title 17, chapter 4, part 1.

(2) (a) Except as provided in 2-15-2015, the executive director shall annually submit to the board for its approval an estimated budget of the entire expense of administering the state fund for the succeeding fiscal year, with due regard to the business interests and contract obligations of the state fund. A copy of the approved budget must be delivered to the governor and the legislature.

~~(b) Upon approval of the estimated budget for the succeeding fiscal year, the state fund shall, no later than October 1 of each year, submit the approved annual budget for review to the legislative fiscal analyst. The~~

~~budget must be submitted in an electronic format.~~

~~(c)~~(b) Dividends may not be included as administrative expenditures as provided in subsection (2)(a)~~,~~ but are a disbursement of excess surplus pursuant to 39-71-2323 after a determination by the state fund of income from operations.

(3) The board shall submit an annual financial report to the governor and to the legislature as provided in 5-11-210, indicating the business done by the state fund during the previous year and containing a statement of the estimated liabilities of the state fund as determined by an independent actuary."

Section 22. Repealer. The following sections of the Montana Code Annotated are repealed:

33-16-1024. Plan No. 3 membership in licensed workers' compensation advisory organization -- reporting requirements.

39-71-2314. State fund subject to laws applying to state agencies.

39-71-2362. Authority of legislative auditor with respect to state fund.

Section 23. Transition. As part of the documentation required in [section 1(2)(b)], the state fund provided for in 39-71-2313 shall develop and submit to the insurance commissioner a transition plan to fully implement the designated advisory organization's requirements applicable under Title 33, chapter 16, part 10, to state fund. The plan must be submitted no later than January 1, 2016. The state fund and the insurance commissioner shall provide periodic updates to the economic affairs interim committee.

Section 24. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 33, chapter 1, and the provisions of Title 33, chapter 1, apply to [section 1].

(2) [Section 1] is also intended to be codified as an integral part of Title 39, chapter 71, part 23, and the provisions of Title 39, chapter 71, part 23, apply to [section 1].

Section 25. Effective date -- applicability date. [This act] is effective January 1, 2016, and applies to rates that are effective on or after July 1, 2016, for new and renewal policies.

- END -

I hereby certify that the within bill,

SB 0123, originated in the Senate.

Secretary of the Senate

President of the Senate

Signed this _____ day

of _____, 2015.

Speaker of the House

Signed this _____ day

of _____, 2015.

SENATE BILL NO. 123

INTRODUCED BY B. TUTVEDT, E. BUTTREY, T. FACEY, D. ANKNEY

AN ACT REVISING THE REGULATORY AUTHORITY OVER MONTANA STATE FUND TO PROVIDE REGULATORY AND COMPLAINT PROCESSES UNDER THE INSURANCE COMMISSIONER THAT GENERALLY ARE APPLICABLE TO PRIVATE WORKERS' COMPENSATION INSURERS; PREVENTING THE INSURANCE COMMISSIONER FROM DISSOLVING OR SUSPENDING THE LICENSE OF STATE FUND; SUBJECTING THE RATEMAKING AUTHORITY OF THE STATE FUND'S BOARD OF DIRECTORS TO THE SAME REVIEW BY THE INSURANCE COMMISSIONER AS EXPERIENCED BY PRIVATE-SECTOR INSURERS; REVISING THE BUDGETING AND FINANCIAL REPORTING FUNCTIONS OF THE STATE FUND TO A CALENDAR YEAR BASIS; PROVIDING AN ENHANCED RISK-BASED CAPITAL MECHANISM TO ALERT THE INSURANCE COMMISSIONER TO POTENTIAL STATE FUND FINANCIAL INSTABILITY; PROVIDING REHABILITATION AUTHORITY TO THE INSURANCE COMMISSIONER FOR STATE FUND; REVISING REFERENCE TO EXCESSIVE RATES AS RELATED TO MARKET COMPETITION; REMOVING RATE REVIEW FROM THE LEGISLATIVE AUDITOR'S DUTIES; REMOVING BUDGETARY REVIEW FROM THE LEGISLATIVE FISCAL ANALYST'S DUTIES; PROVIDING FOR A TRANSITION; AMENDING SECTIONS 2-4-101, 17-1-102, 17-2-110, 33-1-102, 33-2-1902, 33-16-303, 33-16-1002, 33-16-1008, 33-16-1021, 33-16-1033, 33-16-1035, 39-71-2312, 39-71-2315, 39-71-2316, 39-71-2323, 39-71-2330, 39-71-2332, 39-71-2351, 39-71-2361, AND 39-71-2363, MCA; REPEALING SECTIONS 33-16-1024, 39-71-2314, AND 39-71-2362, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.