

1 SENATE BILL NO. 99

2 INTRODUCED BY J. COHENOUR

3 BY REQUEST OF THE STATE AUDITOR

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO THE SMALL
6 BUSINESS HEALTH INSURANCE POOL TO RETAIN A SMALL BUSINESS PREMIUM INCENTIVE;
7 REMOVING PRIOR TO 2016 THE PREMIUM ASSISTANCE AND TAX CREDIT PROGRAMS WITHIN THE
8 SMALL BUSINESS HEALTH INSURANCE POOL; ELIMINATING THE BOARD OF DIRECTORS OF THE
9 SMALL BUSINESS HEALTH INSURANCE POOL; PROVIDING FOR A TRANSITION TO THE REVISED
10 PREMIUM INCENTIVE PAYMENT; EXTENDING RULEMAKING AUTHORITY; AUTHORIZING THE
11 INSURANCE COMMISSIONER TO SEEK A WAIVER IN RELATION TO THE SMALL BUSINESS PREMIUM
12 INCENTIVE PROGRAM; AMENDING SECTIONS 15-30-2110, 15-31-130, 15-31-511, 33-22-1815, 33-22-1816,
13 33-22-2001, 33-22-2002, 33-22-2005, 33-22-2006, 33-22-2007, 33-22-2008, 33-22-2009, 45-6-301, 53-2-217,
14 AND 53-6-1201, MCA; REPEALING SECTIONS 33-22-2003, 33-22-2004, AND 53-2-216, MCA; AND
15 PROVIDING EFFECTIVE DATES AND AN APPLICABILITY DATE."

16

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

18

19 **Section 1.** Section 15-30-2110, MCA, is amended to read:

20 **"15-30-2110. Adjusted gross income.** (1) Subject to subsection (13), adjusted gross income is the
21 taxpayer's federal adjusted gross income as defined in section 62 of the Internal Revenue Code, 26 U.S.C. 62,
22 and in addition includes the following:

23 (a) (i) interest received on obligations of another state or territory or county, municipality, district, or other
24 political subdivision of another state, except to the extent that the interest is exempt from taxation by Montana
25 under federal law;

26 (ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C.
27 852(b)(5), that are attributable to the interest referred to in subsection (1)(a)(i);

28 (b) refunds received of federal income tax, to the extent that the deduction of the tax resulted in a
29 reduction of Montana income tax liability;

30 (c) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue

- 1 Code that has been reduced by any federal taxes paid by the subchapter S. corporation on the income;
- 2 (d) depreciation or amortization taken on a title plant as defined in 33-25-105;
- 3 (e) the recovery during the tax year of an amount deducted in any prior tax year to the extent that the
- 4 amount recovered reduced the taxpayer's Montana income tax in the year deducted;
- 5 (f) if the state taxable distribution of an estate or trust is greater than the federal taxable distribution of
- 6 the same estate or trust, the difference between the state taxable distribution and the federal taxable distribution
- 7 of the same estate or trust for the same tax period; and
- 8 (g) except for exempt-interest dividends described in subsection (2)(a)(ii), for tax years commencing after
- 9 December 31, 2002, the amount of any dividend to the extent that the dividend is not included in federal adjusted
- 10 gross income.
- 11 (2) Notwithstanding the provisions of the Internal Revenue Code, adjusted gross income does not
- 12 include the following, which are exempt from taxation under this chapter:
- 13 (a) (i) all interest income from obligations of the United States government, the state of Montana, or a
- 14 county, municipality, district, or other political subdivision of the state and any other interest income that is exempt
- 15 from taxation by Montana under federal law;
- 16 (ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C.
- 17 852(b)(5), that are attributable to the interest referred to in subsection (2)(a)(i);
- 18 (b) interest income earned by a taxpayer who is 65 years of age or older in a tax year up to and including
- 19 \$800 for a taxpayer filing a separate return and \$1,600 for each joint return;
- 20 (c) (i) except as provided in subsection (2)(c)(ii), the first \$3,600 of all pension and annuity income
- 21 received as defined in 15-30-2101;
- 22 (ii) for pension and annuity income described under subsection (2)(c)(i), as follows:
- 23 (A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total
- 24 amount of the exclusion provided in subsection (2)(c)(i) by \$2 for every \$1 of federal adjusted gross income in
- 25 excess of \$30,000 as shown on the taxpayer's return;
- 26 (B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity
- 27 income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided in
- 28 subsection (2)(c)(i) must be reduced by \$2 for every \$1 of federal adjusted gross income in excess of \$30,000
- 29 as shown on their joint return;
- 30 (d) all Montana income tax refunds or tax refund credits;

- 1 (e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);
- 2 (f) all tips or gratuities that are covered by section 3402(k) or service charges that are covered by section
3 3401 of the Internal Revenue Code of 1954, 26 U.S.C. 3402(k) or 3401, as amended and applicable on January
4 1, 1983, received by a person for services rendered to patrons of premises licensed to provide food, beverage,
5 or lodging;
- 6 (g) all benefits received under the workers' compensation laws;
- 7 (h) all health insurance premiums paid by an employer for an employee if attributed as income to the
8 employee under federal law, including premiums paid by the employer for an employee pursuant to 33-22-166;
- 9 (i) all money received because of a settlement agreement or judgment in a lawsuit brought against a
10 manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange";
- 11 (j) principal and income in a medical care savings account established in accordance with 15-61-201
12 or withdrawn from an account for eligible medical expenses, as defined in 15-61-102, of the taxpayer or a
13 dependent of the taxpayer or for the long-term care of the taxpayer or a dependent of the taxpayer;
- 14 (k) principal and income in a first-time home buyer savings account established in accordance with
15 15-63-201 or withdrawn from an account for eligible costs, as provided in 15-63-202(7), for the first-time purchase
16 of a single-family residence;
- 17 (l) contributions or earnings withdrawn from a family education savings account or from a qualified tuition
18 program established and maintained by another state as provided by section 529(b)(1)(A)(ii) of the Internal
19 Revenue Code, 26 U.S.C. 529(b)(1)(A)(ii), for qualified higher education expenses, as defined in 15-62-103, of
20 a designated beneficiary;
- 21 (m) the recovery during the tax year of any amount deducted in any prior tax year to the extent that the
22 recovered amount did not reduce the taxpayer's Montana income tax in the year deducted;
- 23 (n) if the federal taxable distribution of an estate or trust is greater than the state taxable distribution of
24 the same estate or trust, the difference between the federal taxable distribution and the state taxable distribution
25 of the same estate or trust for the same tax period;
- 26 (o) deposits, not exceeding the amount set forth in 15-30-3003, deposited in a Montana farm and ranch
27 risk management account, as provided in 15-30-3001 through 15-30-3005, in any tax year for which a deduction
28 is not provided for federal income tax purposes;
- 29 (p) income of a dependent child that is included in the taxpayer's federal adjusted gross income pursuant
30 to the Internal Revenue Code. The child is required to file a Montana personal income tax return if the child and

1 taxpayer meet the filing requirements in 15-30-2602.

2 (q) principal and income deposited in a health care expense trust account, as defined in 2-18-1303, or
3 withdrawn from the account for payment of qualified health care expenses as defined in 2-18-1303; and

4 ~~(r) that part of the refundable credit provided in 33-22-2006 that reduces Montana tax below zero; and~~
5 ~~(s)(r)~~ the amount of the gain recognized from the sale or exchange of a mobile home park as provided
6 in 15-31-163.

7 (3) A shareholder of a DISC that is exempt from the corporate income tax under 15-31-102(1)(l) shall
8 include in the shareholder's adjusted gross income the earnings and profits of the DISC in the same manner as
9 provided by section 995 of the Internal Revenue Code, 26 U.S.C. 995, for all periods for which the DISC election
10 is effective.

11 (4) A taxpayer who, in determining federal adjusted gross income, has reduced the taxpayer's business
12 deductions by an amount for wages and salaries for which a federal tax credit was elected under sections 38 and
13 51(a) of the Internal Revenue Code, 26 U.S.C. 38 and 51(a), is allowed to deduct the amount of the wages and
14 salaries paid regardless of the credit taken. The deduction must be made in the year that the wages and salaries
15 were used to compute the credit. In the case of a partnership or small business corporation, the deduction must
16 be made to determine the amount of income or loss of the partnership or small business corporation.

17 (5) Married taxpayers filing a joint federal return who are required to include part of their social security
18 benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal
19 base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad retirement
20 benefits when they file separate Montana income tax returns. The federal base must be split equally on the
21 Montana return.

22 (6) Married taxpayers filing a joint federal return who are allowed a capital loss deduction under section
23 1211 of the Internal Revenue Code, 26 U.S.C. 1211, and who file separate Montana income tax returns may
24 claim the same amount of the capital loss deduction that is allowed on the federal return. If the allowable capital
25 loss is clearly attributable to one spouse, the loss must be shown on that spouse's return; otherwise, the loss
26 must be split equally on each return.

27 (7) In the case of passive and rental income losses, married taxpayers filing a joint federal return and
28 who file separate Montana income tax returns are not required to recompute allowable passive losses according
29 to the federal passive activity rules for married taxpayers filing separately under section 469 of the Internal
30 Revenue Code, 26 U.S.C. 469. If the allowable passive loss is clearly attributable to one spouse, the loss must

1 be shown on that spouse's return; otherwise, the loss must be split equally on each return.

2 (8) Married taxpayers filing a joint federal return in which one or both of the taxpayers are allowed a
3 deduction for an individual retirement contribution under section 219 of the Internal Revenue Code, 26 U.S.C.
4 219, and who file separate Montana income tax returns may claim the same amount of the deduction that is
5 allowed on the federal return. The deduction must be attributed to the spouse who made the contribution.

6 (9) (a) Married taxpayers filing a joint federal return who are allowed a deduction for interest paid for a
7 qualified education loan under section 221 of the Internal Revenue Code, 26 U.S.C. 221, and who file separate
8 Montana income tax returns may claim the same amount of the deduction that is allowed on the federal return.
9 The deduction may be split equally on each return or in proportion to each taxpayer's share of federal adjusted
10 gross income.

11 (b) Married taxpayers filing a joint federal return who are allowed a deduction for qualified tuition and
12 related expenses under section 222 of the Internal Revenue Code, 26 U.S.C. 222, and who file separate Montana
13 income tax returns may claim the same amount of the deduction that is allowed on the federal return. The
14 deduction may be split equally on each return or in proportion to each taxpayer's share of federal adjusted gross
15 income.

16 (10) A taxpayer receiving retirement disability benefits who has not attained 65 years of age by the end
17 of the tax year and who has retired as permanently and totally disabled may exclude from adjusted gross income
18 up to \$100 a week received as wages or payments in lieu of wages for a period during which the employee is
19 absent from work due to the disability. If the adjusted gross income before this exclusion exceeds \$15,000, the
20 excess reduces the exclusion by an equal amount. This limitation affects the amount of exclusion, but not the
21 taxpayer's eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the
22 limitation for income exceeding \$15,000 is determined with respect to the spouses on their combined adjusted
23 gross income. For the purpose of this subsection, "permanently and totally disabled" means unable to engage
24 in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting
25 or expected to last at least 12 months.

26 (11) (a) An individual who contributes to one or more accounts established under the Montana family
27 education savings program or to a qualified tuition program established and maintained by another state as
28 provided by section 529(b)(1)(A)(ii) of the Internal Revenue Code, 26 U.S.C. 529(b)(1)(A)(ii), may reduce adjusted
29 gross income by the lesser of \$3,000 or the amount of the contribution. In the case of married taxpayers, each
30 spouse is entitled to a reduction, not in excess of \$3,000, for the spouses' contributions to the accounts. Spouses

1 may jointly elect to treat half of the total contributions made by the spouses as being made by each spouse. The
2 reduction in adjusted gross income under this subsection applies only with respect to contributions to an account
3 of which the account owner is the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild if the
4 taxpayer's child or stepchild is a Montana resident. The provisions of subsection (1)(e) do not apply with respect
5 to withdrawals of contributions that reduced adjusted gross income.

6 (b) Contributions made pursuant to this subsection (11) are subject to the recapture tax provided in
7 15-62-208.

8 (12) (a) A taxpayer may exclude the amount of the loan payment received pursuant to subsection
9 (12)(a)(iv), not to exceed \$5,000, from the taxpayer's adjusted gross income if the taxpayer:

10 (i) is a health care professional licensed in Montana as provided in Title 37;

11 (ii) is serving a significant portion of a designated geographic area, special population, or facility
12 population in a federally designated health professional shortage area, a medically underserved area or
13 population, or a federal nursing shortage county as determined by the secretary of health and human services
14 or by the governor;

15 (iii) has had a student loan incurred as a result of health-related education; and

16 (iv) has received a loan payment during the tax year made on the taxpayer's behalf by a loan repayment
17 program described in subsection (12)(b) as an incentive to practice in Montana.

18 (b) For the purposes of subsection (12)(a), a loan repayment program includes a federal, state, or
19 qualified private program. A qualified private loan repayment program includes a licensed health care facility, as
20 defined in 50-5-101, that makes student loan payments on behalf of the person who is employed by the facility
21 as a licensed health care professional.

22 (13) Notwithstanding the provisions of subsection (1), adjusted gross income does not include 40% of
23 capital gains on the sale or exchange of capital assets before December 31, 1986, as capital gains are
24 determined under subchapter P. of Chapter 1 of the Internal Revenue Code as it read on December 31, 1986.

25 (14) By November 1 of each year, the department shall multiply the amount of pension and annuity
26 income contained in subsection (2)(c)(i) and the federal adjusted gross income amounts in subsection (2)(c)(ii)
27 by the inflation factor for that tax year, but using the year 2009 consumer price index, and rounding the results
28 to the nearest \$10. The resulting amounts are effective for that tax year and must be used as the basis for the
29 exemption determined under subsection (2)(c). (Subsection (2)(f) terminates on occurrence of contingency--sec.
30 3, Ch. 634, L. 1983; subsection (2)(o) terminates on occurrence of contingency--sec. 9, Ch. 262, L. 2001.)"

1

2 **Section 2.** Section 15-31-130, MCA, is amended to read:

3 **"15-31-130. Tax ~~credit~~ deduction for health insurance premiums paid -- eligible small employers**
4 **-- corporations.** There is a tax ~~credit~~ deduction for the amount of premium paid for a group health plan that is
5 not covered by the premium incentive payment paid under the insure Montana program and that is not otherwise
6 covered by a tax credit, as determined under Title 33, chapter 22, part 20, for eligible small employers against
7 the taxes imposed in 15-31-101 and 15-31-502 ~~for qualifying premiums paid by the eligible small employer for~~
8 ~~coverage of eligible employees and eligible employees' spouses and dependents under a group health plan~~
9 ~~subject to Title 33, chapter 22, part 20."~~

10

11 **Section 3.** Section 15-31-511, MCA, is amended to read:

12 **"15-31-511. Confidentiality of tax records.** (1) Except as provided in this section, in accordance with
13 a proper judicial order, or as otherwise provided by law, it is unlawful to divulge or make known in any manner:

14 (a) the amount of income or any particulars set forth or disclosed in any return or report required under
15 this chapter or any other information relating to taxation secured in the administration of this chapter; or

16 (b) any federal return or information in or disclosed on a federal return or report required by law or rule
17 of the department under this chapter.

18 (2) (a) An officer or employee charged with custody of returns and reports required by this chapter may
19 not be ordered to produce any of them or evidence of anything contained in them in any administrative
20 proceeding or action or proceeding in any court, except:

21 (i) in an action or proceeding in which the department is a party under the provisions of this chapter; or

22 (ii) in any other tax proceeding or on behalf of a party to an action or proceeding under the provisions of
23 this chapter when the returns or reports or facts shown in them are directly pertinent to the action or proceeding.

24 (b) If the production of a return, report, or information contained in them is ordered, the court shall limit
25 production of and the admission of returns, reports, or facts shown in them to the matters directly pertinent to the
26 action or proceeding.

27 (3) This section does not prohibit:

28 (a) the delivery of a certified copy of any return or report filed in connection with a return to the taxpayer
29 who filed the return or report or to the taxpayer's authorized representative;

30 (b) the publication of statistics prepared in a manner that prevents the identification of particular returns,

1 reports, or items from returns or reports;

2 (c) the inspection of returns and reports by the attorney general or other legal representative of the state
3 in the course of an administrative proceeding or litigation under this chapter;

4 (d) access to information under subsection (4);

5 (e) the director of revenue from permitting a representative of the commissioner of internal revenue of
6 the United States or a representative of a proper officer of any state imposing a tax on the income of a taxpayer
7 to inspect the returns or reports of a corporation. The department may also furnish those persons abstracts of
8 income, returns, and reports; information concerning any item in a return or report; and any item disclosed by an
9 investigation of the income or return of a corporation. The director of revenue may not furnish that information
10 to a person representing the United States or another state unless the United States or the other state grants
11 substantially similar privileges to an officer of this state charged with the administration of this chapter.

12 (f) the disclosure of information to the commissioner of insurance's office that is necessary for the
13 administration of the insure Montana small business ~~health insurance tax credit~~ premium incentive program
14 provided for in Title 33, chapter 22, part 20.

15 (4) On written request to the director or a designee of the director, the department shall:

16 (a) allow the inspection of returns and reports by the legislative auditor, but the information furnished to
17 the legislative auditor is subject to the same restrictions on disclosure outside that office as provided in subsection
18 (1); and

19 (b) provide corporate income tax and alternative corporate income tax information, including any
20 information that may be required under Title 15, chapter 30, part 33, to the legislative fiscal analyst, as provided
21 in 5-12-303 or 15-1-106, and the office of budget and program planning, as provided in 15-1-106 or 17-7-111.
22 The information furnished to the legislative fiscal analyst and the office of budget and program planning is subject
23 to the same restrictions on disclosure outside those offices as provided in subsection (1).

24 (5) A person convicted of violating this section shall be fined not to exceed \$500. If a public officer or
25 public employee is convicted of violating this section, the person is dismissed from office or employment and may
26 not hold any public office or public employment in the state for a period of 1 year after dismissal or, in the case
27 of a former officer or employee, for 1 year after conviction."

28

29 **Section 4.** Section 33-22-1815, MCA, is amended to read:

30 **"33-22-1815. Qualifications for voluntary purchasing pool.** A voluntary purchasing pool of disability

1 insurance purchasers may be formed solely for the purpose of obtaining disability insurance upon compliance
2 with the following provisions:

3 (1) It contains at least 51 eligible employees.

4 (2) It establishes requirements for membership. The voluntary purchasing pool shall accept for
5 membership any small employers and may accept for membership any employers with at least 51 eligible
6 employees that otherwise meet the requirements for membership. However, the voluntary purchasing pool may
7 not exclude any small employers that otherwise meet the requirements for membership on the basis of claim
8 experience, occupation, or health status.

9 (3) It holds an open enrollment period at least once a year during which new members can join the
10 voluntary purchasing pool.

11 (4) It offers coverage to eligible employees of member employers and to the employees' dependents.
12 Coverage may not be limited to certain employees of member small employers except as provided in
13 33-22-1811(3)(c).

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

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

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

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

23 (7) A person marketing disability insurance policies, certificates, or contracts for a voluntary purchasing
24 pool must be licensed as an insurance producer."
25

26 **Section 5.** Section 33-22-1816, MCA, is amended to read:

27 **"33-22-1816. Commissioner powers and duties -- application for registration -- reporting**
28 **insolvency.** (1) The commissioner shall develop forms for registration of an organization as a voluntary
29 purchasing pool.

30 (2) An organization seeking to be registered as a voluntary purchasing pool shall make application to

1 the commissioner. The commissioner shall register an organization as a voluntary purchasing pool upon proof
2 of fulfillment of the qualifications provided in 33-22-1815.

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

6 (a) whether the operation of the voluntary purchasing pool is fiscally sound;

7 (b) whether the voluntary purchasing pool is bearing any risk; and

8 (c) the number of individuals covered.

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

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

14 ~~(6) The commissioner may exempt the small business health insurance purchasing pool established in
15 33-22-2001 from the reporting requirements under subsection (3)."~~

16

17 **Section 6.** Section 33-22-2001, MCA, is amended to read:

18 **"33-22-2001. Establishment of small business health insurance pool -- intent.** (1) There is
19 established an entity known as the small business health insurance pool, with participating membership
20 consisting of all employer members of the purchasing pool.

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

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

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

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

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

1 (i) is not more than 12 months; and

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

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

6 (6) (a) There is established as of [the effective date of this section] an entity known as the insure Montana
7 small business premium incentive program, with participating membership consisting of all employer members
8 of the insure Montana program.

9 (b) The commissioner shall, prior to January 1, 2016, provide for a phasing out of the small business
10 health insurance pool and a transition to the January 1, 2016, implementation of the insure Montana small
11 business premium incentive program. The commissioner shall implement and oversee the insure Montana small
12 business premium incentive program, including accepting applications prior to January 1, 2016, for premium
13 incentive payments starting in 2016."

14

15 **Section 7.** Section 33-22-2001, MCA, is amended to read:

16 **"33-22-2001. Establishment of insure Montana small business health insurance pool -- intent**
17 **premium incentive program.** (1) There is established an entity known as the ~~small business health insurance~~
18 ~~pool~~ insure Montana small business premium incentive program, with participating membership consisting of all
19 employer members of the ~~purchasing pool~~ insure Montana program.

20 (2) The commissioner shall implement the provisions of this part and oversee the insure Montana small
21 business premium incentive program, also known as the insure Montana program.

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

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

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

27 ~~———— (a) establish criteria that will allow the greatest number of employees possible to be eligible for premium~~
28 ~~assistance payments by not permitting eligibility for premium assistance payments under this part to employees~~
29 ~~who continue other comprehensive health insurance coverage through a spouse, parent, or other person; and~~

30 ~~———— (b) allow eligible small employers to determine the length of the waiting period that will apply to their~~

1 ~~employees as long as the waiting period:~~

2 ~~—— (i) is not more than 12 months; and~~

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

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

7

8 **Section 8.** Section 33-22-2002, MCA, is amended to read:

9 **"33-22-2002. ~~Small business health insurance pool~~ Insure Montana program -- definitions.** As used
 10 in this part, the following definitions apply:

11 (1) ~~"Board" means the board of directors of the small business health insurance pool as provided for in~~
 12 ~~33-22-2003.~~

13 (2)(1) ~~"Dependent" has the meaning provided in 33-22-1803.~~

14 (3)(2) (a) ~~"Eligible small employer" means an employer who is sponsoring or will sponsor a group health~~
 15 ~~plan and who:~~

16 (a) ~~employed at least two 1 but not more than nine 25 employees during the preceding calendar year;~~
 17 ~~and who~~

18 (b) ~~employs at least two 1 but not more than nine 25 employees on the first day of the plan year; and~~

19 (c) ~~employs at least one nonrelated employee.~~

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

22 (4)(3) ~~"Employee" means an eligible employee as defined in 33-22-1803.~~

23 (5)(4) ~~"Group health plan" means health insurance coverage offered in connection with a group health~~
 24 ~~plan or health insurance coverage offered to an eligible group as described in 33-22-504 as described in~~
 25 ~~33-22-140, except that:~~

26 (a) ~~a self-funded multiple employer welfare arrangement as described in 33-35-103 does not qualify as~~
 27 ~~a group health plan under this part; and~~

28 (b) ~~the group health plan is offered only to owners and employees and not to dependents or spouses.~~

29 (5) ~~"Nonrelated employee" means an employee who is not related by blood, marriage, or adoption to the~~
 30 ~~employer or to any owner, in whole or in part, of the eligible small employer.~~

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

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

6 ~~(7)~~ (7) "Premium incentive payment" means a payment provided for in 33-22-2007~~(4)(b)~~ to an eligible
7 small ~~employers~~ employer who ~~qualify~~ qualifies under ~~33-22-2007~~ 33-22-2006 to be applied to premiums paid
8 on a monthly basis for group health plan coverage for all eligible employees of the eligible small employer and,
9 if applicable, any owners of the eligible small employer. ~~obtained through the purchasing pool or through qualified
10 association health plans.~~

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

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

18 ~~(11)~~ (8) "Related employers" means:

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

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

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

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

24

25 **Section 9.** Section 33-22-2005, MCA, is amended to read:

26 **"33-22-2005. Duties of commissioner -- rulemaking authority -- premium incentive formula.** Subject
27 to the conditions in 53-6-1201, the The commissioner shall:

28 (1) adopt rules regarding the implementation of this part, including rules regarding the administration of
29 the premium incentive payments, ~~premium assistance payments, and tax credits, the approval of qualified
30 association health plans, and the registration process.~~ ~~The rules regarding tax credits may not relate to the filing~~

1 of tax returns and claiming the tax credit on the tax returns:
 2 ~~———(2) supervise the creation of the purchasing pool within the limits described in this part;~~
 3 ~~———(3) approve or disapprove the operating plan for the purchasing pool;~~
 4 ~~———(4) if the board chooses to hire one, approve or disapprove the selection of a third-party administrator~~
 5 ~~to handle the administration of the purchasing pool;~~
 6 ~~———(5) with the assistance of the department of public health and human services, approve or disapprove~~
 7 ~~the schedule of premium incentive payment or premium assistance payment amounts adopted by the board as~~
 8 ~~provided in 33-22-2004;~~
 9 ~~———(6) approve or disapprove any contracts between a health insurance issuer and the purchasing pool;~~
 10 ~~———(7) approve or disapprove all group health plans being offered by insurers through the purchasing pool;~~
 11 ~~———(8) conduct periodic audits of the financial transactions conducted by the purchasing pool;~~
 12 ~~———(9) allow up to 30%, or more if requested by the board and approved by the commissioner, of the~~
 13 ~~available funding for the premium incentive payments and premium assistance payments to be applied to small~~
 14 ~~group health plan coverage purchased through a qualified association health plan;~~
 15 ~~———(10) make applicable premium incentive payments or premium assistance payments for qualified~~
 16 ~~association health plan coverage on behalf of eligible small employers and employees or direct the purchasing~~
 17 ~~pool to make the payments; and~~
 18 ~~———(11) approve or disapprove associations as qualified if their members consist of employers who sponsor~~
 19 ~~group health plan coverage for their employees and purchase that coverage through an association that qualifies~~
 20 ~~as a bona fide association, as defined in 33-22-1803, or nonbona fide, as provided for in administrative rule. A~~
 21 ~~qualified association health plan is subject to applicable employer group health insurance law.~~
 22 (2) establish by rule the amount of premium incentive payment available to an eligible small employer,
 23 subject to the following:
 24 (a) the premium incentive payments may not exceed 50% of the total premiums paid by the eligible small
 25 employer;
 26 (b) the premium incentive payments must be at least 10% of the total premium paid by the eligible small
 27 employer;
 28 (c) the premium incentive payment formula should balance the goal of having as many eligible small
 29 employers in the insure Montana program as possible with the goal of providing meaningful assistance to each
 30 eligible small employer; and

1 (d) the total amount of the premium incentive payments provided to all eligible small employers through
 2 the insure Montana program may not exceed the amount of available state, federal, and private funding for the
 3 insure Montana program;

4 (3) approve or disapprove an applicant as an eligible small employer for the insure Montana program;
 5 and

6 (4) seek a waiver under 42 U.S.C. 18052 for flexibility and relief from certain requirements of the Patient
 7 Protection and Affordable Care Act, enacted as Public Law 111-148 and Public Law 111-152."

8

9 **Section 10.** Section 33-22-2006, MCA, is amended to read:

10 **~~"33-22-2006. Premium incentive payments, premium assistance payments, and tax credits for~~**
 11 **~~small employer health insurance premiums paid -- eligibility for small group coverage -- amounts~~**
 12 **Eligibility for insure Montana program -- maximum amount of premium incentive payment.** (1) An employer
 13 is eligible to apply for premium incentive payments ~~and premium assistance payments or a tax credit~~ under this
 14 part if the employer and any related employers:

15 (a) did not have more than the number of employees established for eligibility by the commissioner at
 16 the time of registering for premium incentive payments ~~or premium assistance payments or a tax credit~~ under
 17 33-22-2008;

18 (b) ~~provide pay~~ or will ~~provide a pay~~ 100% of the premium for a group health plan that meets the
 19 requirements of creditable coverage issued on or after January 1, 2016, and approved by the commissioner. The
 20 group health plan must provide coverage for all of the employer's and any related employer's employees who are
 21 eligible for the group health plan;

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

23 (d) have been registered as eligible small employer participants by the commissioner as provided in
 24 33-22-2008-

25 ~~——(2) In addition to the requirements in subsection (1), a small employer is eligible to apply for a tax credit~~
 26 ~~under this part if the small employer and any related employers; and~~

27 (e) do not have any employees, not including an owner, partner, or shareholder of the business, who
 28 received more than \$75,000 in wages, as defined in 39-71-123, from the small employer or related employer in
 29 the prior tax year.

30 ~~(3) In addition to the requirements of subsections (1) and (2), an owner, partner, or shareholder of an~~

1 eligible small employer who received more than \$75,000 in wages, as defined in 39-71-123, and those individuals'
 2 spouses who are employees are not eligible under this chapter for a tax credit for group health plan premiums
 3 paid by the eligible small employer for group health plan coverage for the individual or the individual's
 4 dependents.

5 ~~———— (4) In addition to the requirements in subsection (1), an owner or employee is not eligible to apply for a~~
 6 ~~premium assistance payment under this part if the owner or employee has a household income greater than~~
 7 ~~400% of the federal poverty level for the year in which an application or application renewal is made.~~

8 (5)(2) Subject to the requirements of subsection (4), the small business health insurance pool
 9 commissioner may authorize a premium incentive payment for the premium share paid by an eligible small
 10 employer and related employers for a group health plan for:

11 (a) ~~the owner or employee~~ all employees of the eligible small employer and related employers eligible
 12 for the group health plan;

13 (b) a spouse of an any owner or employee provided for in subsection (5)(a); or

14 ~~———— (c) dependents of the owner or employee provided for in subsection (5)(a) of the eligible small employer~~
 15 ~~and related employers if they are also members of the same group health plan.~~

16 ~~(6) An employee, including an owner, partner, or shareholder or any dependent of an employee, who~~
 17 ~~is also eligible for the children's health insurance program provided for under Title 53, chapter 4, part 10, or~~
 18 ~~medicaid under Title XIX of the Social Security Act may become ineligible to receive a premium assistance~~
 19 ~~payment.~~

20 (7)(3) The commissioner shall may establish, by rule, the maximum number of employees that an
 21 employer may employ to be qualified as an eligible small employer under subsection (1). The maximum number
 22 may be different for eligible small employers seeking premium incentive payments and premium assistance
 23 payments than for eligible small employers seeking a tax credit. The number must be set to maximize the number
 24 of employees receiving coverage under this part less than or equal to 25 but not more than 25. The commissioner
 25 may not change the maximum employee number more often than every 6 12 months. If the maximum number
 26 of allowable employees is changed, the change does not disqualify a registered eligible small employers with
 27 respect to the tax year for which the eligible small employer has registered employer until the eligible small
 28 employer reapplies for the insure Montana program.

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

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

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

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

10 ~~_____ (9) An eligible small employer may not claim a tax credit:~~

11 ~~_____ (a) in excess of 50% of the total premiums paid by the eligible small employer for the qualifying small~~
 12 ~~group;~~

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

14 ~~_____ (c) for premiums for which a deduction is claimed under 15-30-2131 or 15-31-114.~~

15 ~~(+0)(4) An eligible small employer may not claim a premium incentive payment in excess of 50% of the~~
 16 ~~total premiums paid by the eligible small employer for the qualifying small group."~~

17

18 **Section 11.** Section 33-22-2007, MCA, is amended to read:

19 **"33-22-2007. Filing for tax credit -- filing for premium incentive payments and premium assistance**
 20 **payments.** (1) An eligible small employer may:

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

23 ~~_____ (b) apply to receive monthly premium incentive payments and premium assistance payments to be~~
 24 ~~applied to premiums for group health plans. coverage obtained through the purchasing pool or qualified~~
 25 ~~association health plan coverage approved by the commissioner.~~

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

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

1 ~~———— (4) (a) If an eligible small employer's tax credit as provided in subsection (1)(a) exceeds the employer's~~
 2 ~~liability under 15-30-2103 or 15-31-121, the amount of the excess must be refunded to the eligible small~~
 3 ~~employer. The tax credit may be claimed even if the eligible small employer has no tax liability under 15-30-2103~~
 4 ~~or 15-31-121.~~

5 ~~———— (b) A tax credit is not allowed under 15-30-2367, 15-31-132, or any other provision of Title 15, chapter~~
 6 ~~30 or 31, with respect to any amount for which a tax credit is allowed under this part.~~

7 ~~(5)(2) The department of revenue or the commissioner may grant a reasonable extension for filing a~~
 8 ~~claim for premium incentive payments or premium assistance payments or a tax credit whenever, in the~~
 9 ~~department's or the commissioner's judgment, good cause exists. The department of revenue and the~~
 10 ~~commissioner shall keep a record of each extension and the reason for granting the extension.~~

11 ~~(6)(3) (a) If an employer that would have a claim under this part ceases doing business before filing the~~
 12 ~~claim, the representative of the employer who files the tax return or pays the premium may file the claim.~~

13 (b) If a corporation that would have a claim under this part merges with or is acquired by another
 14 corporation and the merger or acquisition makes the previously eligible corporation ineligible for the premium
 15 incentive payments, ~~premium assistance payments, or tax credit~~ in the future, the surviving or acquired
 16 corporation may file for the premium incentive payments, ~~premium assistance payments, or tax credit~~ for any
 17 claim period during which the former eligible corporation remained eligible.

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

21
 22 **Section 12.** Section 33-22-2008, MCA, is amended to read:

23 **"33-22-2008. Registration -- funding limitations -- transfers -- maximum number -- waiting list --**
 24 **information transfer for tax credits.** (1) (a) Each A prospective participating small employer and any previously
 25 eligible small employer that proposes to apply for premium incentive payments and premium assistance
 26 payments or a tax credit under this part must be registered each year with the commissioner.

27 (b) An eligible small employer may submit a new application for the premium incentive payments ~~and~~
 28 ~~premium assistance payments or the tax credit anytime during the year~~, but in order to maintain the employer's
 29 registration for the next year, the registration application must be renewed each year according to a procedure
 30 established by the commissioner by rule.

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

7 (d) A small employer is not eligible to apply for premium incentive payments ~~and premium assistance~~
8 ~~payments or a tax credit~~ for a number of employees, ~~or the employees' spouses or dependents~~, over the number
9 that has been established in 33-22-2006 as the maximum number of employees a small employer may have in
10 order to qualify for registration for the time period in question, except that a small employer applying for a
11 premium incentive payment under the insure Montana program may apply prior to January 1, 2016, for the
12 number of employees determined by the commissioner by rule to be eligible for the insure Montana program. The
13 premium incentive payments may not be received prior to January 1, 2016.

14 (e) A small employer's registration for premium incentive payments ~~and premium assistance payments~~
15 ~~or a tax credit~~ is irrevocable for 12 months or until the ~~purchasing pool group health plan or qualified association~~
16 ~~health plan renews its registration~~ eligible small employer renews the group health plan, whichever time period
17 is less. An eligible small employer may choose to discontinue receiving any premium incentive payments ~~and~~
18 ~~premium assistance payments or tax credits~~ at any time.

19 (2) The commissioner shall register qualifying eligible small employers in the order in which applications
20 are received and ~~according to whether the application is for premium incentive payments and premium assistance~~
21 ~~payments or a tax credit. Initially, 60% of the available funding must be dedicated to provide and maintain~~
22 ~~premium incentive payments and premium assistance payments for eligible small employers who chose to join~~
23 ~~the purchasing pool or a qualified association health plan and 40% of the available funding must be dedicated~~
24 ~~to tax credits for eligible small employers who currently sponsor a small group health plan that provides creditable~~
25 ~~coverage. Funding may be transferred from the allocated fund for premium incentive payments and premium~~
26 ~~assistance payments to the general fund for tax credits or from the funds allocated for tax credits to the allocated~~
27 ~~fund for premium incentive payments and premium assistance payments if the board requests the transfer as~~
28 ~~provided in 33-22-2004 and the commissioner approves the request.~~

29 (3) In determining which small employers may participate in the program, the commissioner shall give
30 priority to eligible small employers who are already members of the insure Montana program and who have timely

1 reapplied.

2 ~~(3)(4)~~ (a) The maximum number of eligible small employers is reached when the anticipated amount of
3 claims for premium incentive payments ~~and premium assistance payments and tax credits~~ has reached 100%
4 of the ~~amount of money allocated for premium incentive payments and premium assistance payments and tax~~
5 ~~credits~~ funding available for the insure Montana program.

6 ~~(b)(5)~~ The commissioner may establish a waiting list for applicants that are otherwise qualified for
7 registration but cannot be registered because of a lack of ~~money~~ funding or because the maximum number of
8 eligible small employers has been reached.

9 ~~(c)(6)~~ The commissioner shall mail to each employer registered under this section a notice of registration
10 containing a unique registration number ~~and indicating eligibility for either premium incentive payments and~~
11 ~~premium assistance payments or a tax credit.~~ The commissioner shall also issue to each employer that is eligible
12 for premium incentive payments ~~and premium assistance payments or the tax credit~~ a certificate, placard, sticker,
13 or other evidence of participation that may be publicly posted.

14 ~~(d)(7)~~ The commissioner shall notify all persons who applied for registration and who were not accepted
15 that they were not registered and the reason that they were not registered.

16 ~~(4)(8)~~ A prospective participant shall apply for registration on a form and within the timeframe provided
17 by the commissioner by rule. The prospective participant shall:

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

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

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

27 ~~(d)(c)~~ provide any additional information determined by the commissioner to be necessary to support
28 an application.

29 ~~(5) Each year, an eligible small employer shall timely reregister with the commissioner in order to~~
30 ~~determine the participant's continued eligibility. The commissioner shall accept applications for continued~~

1 registration:

2 ~~—— (a) for purchasing pool participants at any time within 12 months of the initial registration approval or~~
3 ~~within the time period for renewal of the coverage under this part, whichever is longer;~~

4 ~~—— (b) for tax credit participants on December 1 of each year. The commissioner shall stop accepting~~
5 ~~renewal applications for tax credit participants 60 calendar days later.~~

6 ~~(6)(9)~~ The commissioner shall transmit to the department of revenue, at least annually, a list of eligible
7 small employers that are taxpayers entitled to ~~the tax credit~~ deduct the premium incentive payment as provided
8 in 15-31-130 and shall specify the taxpayer's name and tax identification number, ~~the tax year to which the credit~~
9 ~~applies, and~~ the amount of the credit premium incentive provided, ~~and whether the credit is to be applied against~~
10 ~~taxes due on the taxpayer's return or paid as premium incentive payments or premium assistance payments.~~
11 Unless there has been a finding of fraud or misrepresentation on the part of the taxpayer regarding issues relating
12 to eligibility for the ~~tax credit~~ premium incentive payment, the department of revenue may not redetermine or
13 change the commissioner's determination regarding the taxpayer's entitlement to and amount of the ~~tax credit~~
14 premium incentive deduction.

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

18

19 **Section 13.** Section 33-22-2009, MCA, is amended to read:

20 **"33-22-2009. Penalties.** (1) The commissioner may, after providing an opportunity for a hearing pursuant
21 to 33-1-701, impose the penalties provided for in 33-1-317 for a violation of this part. Failure to pay a fine under
22 this section results in a lien upon the assets and property of that person in this state and may be recovered by
23 suit by the commissioner and deposited in the special revenue account described in 53-6-1201.

24 (2) In addition to any penalty provided for in 33-1-317, the commissioner may require a person violating
25 this part to make full restitution to the state, including interest of 10% a year from the date of loss, if a violation
26 of this part caused a ~~premium incentive payment or premium assistance payment to be paid or a tax credit to be~~
27 ~~issued to a person who was not entitled to it.~~

28 (3) A person who purposely or knowingly violates this part and receives a premium incentive payment
29 ~~or premium assistance payment or tax credit~~ that the person is not entitled to receive commits the offense of theft,
30 which is punishable as provided in 45-6-301.

1 (4) A person who purposely or knowingly violates this part and makes false statements, knowing those
2 statements are not true, commits the offense of unsworn falsification to authorities, which is punishable as
3 provided in 45-7-203.

4 (5) Any fines or restitution collected pursuant to this section must be deposited in the special revenue
5 account in 53-6-1201 and dedicated to the payment of premium incentive payments ~~and premium assistance~~
6 ~~payments or tax credits~~ or funding new programs to assist eligible small employers with the cost of providing
7 health insurance benefits."

8

9 **Section 14.** Section 45-6-301, MCA, is amended to read:

10 **"45-6-301. Theft.** (1) A person commits the offense of theft when the person purposely or knowingly
11 obtains or exerts unauthorized control over property of the owner and:

12 (a) has the purpose of depriving the owner of the property;

13 (b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the
14 owner of the property; or

15 (c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment
16 probably will deprive the owner of the property.

17 (2) A person commits the offense of theft when the person purposely or knowingly obtains by threat or
18 deception control over property of the owner and:

19 (a) has the purpose of depriving the owner of the property;

20 (b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the
21 owner of the property; or

22 (c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment
23 probably will deprive the owner of the property.

24 (3) A person commits the offense of theft when the person purposely or knowingly obtains control over
25 stolen property knowing the property to have been stolen by another and:

26 (a) has the purpose of depriving the owner of the property;

27 (b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the
28 owner of the property; or

29 (c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment
30 probably will deprive the owner of the property.

1 (4) A person commits the offense of theft when the person purposely or knowingly obtains or exerts
2 unauthorized control over any part of any public assistance provided under Title 52 or 53 by a state or county
3 agency, regardless of the original source of assistance, by means of:

- 4 (a) a knowingly false statement, representation, or impersonation; or
5 (b) a fraudulent scheme or device.

6 (5) A person commits the offense of theft when the person purposely or knowingly obtains or exerts or
7 helps another obtain or exert unauthorized control over any part of any benefits provided under Title 39, chapter
8 71, by means of:

- 9 (a) a knowingly false statement, representation, or impersonation; or
10 (b) deception or other fraudulent action.

11 (6) (a) A person commits the offense of theft when the person purposely or knowingly commits insurance
12 fraud as provided in 33-1-1202 or 33-1-1302;

13 (b) purposely or knowingly diverts or misappropriates insurance premiums as provided in 33-17-1102;
14 or

15 (c) purposely or knowingly receives small business ~~health insurance~~ premium incentive payments ~~or~~
16 ~~premium assistance payments or tax credits~~ under Title 33, chapter 22, part 20, to which the person is not
17 entitled.

18 (7) A person commits the offense of theft of property by embezzlement when, with the purpose to deprive
19 the owner of the property, the person:

20 (a) purposely or knowingly obtains or exerts unauthorized control over property of the person's employer
21 or over property entrusted to the person; or

22 (b) purposely or knowingly obtains by deception control over property of the person's employer or over
23 property entrusted to the person.

24 (8) (a) Except as provided in subsection (8)(b), a person convicted of the offense of theft of property not
25 exceeding \$1,500 in value shall be fined an amount not to exceed \$1,500 or be imprisoned in the county jail for
26 a term not to exceed 6 months, or both. A person convicted of a second offense shall be fined \$1,500 or be
27 imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of a third or
28 subsequent offense shall be fined \$1,500 and be imprisoned in the county jail for a term of not less than 30 days
29 or more than 6 months.

30 (b) (i) Except as provided in subsection (8)(c), a person convicted of the offense of theft of property

1 exceeding \$1,500 in value or theft of any amount of anhydrous ammonia for the purpose of manufacturing
 2 dangerous drugs shall be fined an amount not to exceed \$50,000 or be imprisoned in a state prison for a term
 3 not to exceed 10 years, or both.

4 (ii) A person convicted of the theft of any commonly domesticated hoofed animal shall be fined an amount
 5 of not less than \$5,000 or more than \$50,000 or be imprisoned in a state prison for a term not to exceed 10 years,
 6 or both. If a prison term is deferred, the court shall order the offender to perform 416 hours of community service
 7 during a 1-year period, in the offender's county of residence. In addition to the fine and imprisonment, the
 8 offender's property is subject to criminal forfeiture pursuant to 45-6-328 and 45-6-329.

9 (c) A person convicted of the offense of theft of property exceeding \$10,000 in value by embezzlement
 10 shall be imprisoned in a state prison for a term of not less than 1 year or more than 10 years and may be fined
 11 an amount not to exceed \$50,000. The court may, in its discretion, place the person on probation with the
 12 requirement that restitution be made under terms set by the court. If the terms are not met, the required prison
 13 term may be ordered.

14 (9) Amounts involved in thefts committed pursuant to a common scheme or the same transaction,
 15 whether from the same person or several persons, may be aggregated in determining the value of the property."
 16

17 **Section 15.** Section 53-2-217, MCA, is amended to read:

18 **"53-2-217. Contingency on expenditure.** Title 33, chapter 22, part 20, may not be construed to require
 19 implementation or ongoing operation of the programs in 53-6-1201(3)(d) through ~~(3)(g)~~ (3)(f) without a line item
 20 appropriation in the general appropriations bill included for that purpose."
 21

22 **Section 16.** Section 53-6-1201, MCA, is amended to read:

23 **"53-6-1201. Special revenue fund -- health and medicaid initiatives.** (1) There is a health and
 24 medicaid initiatives account in the state special revenue fund established by 17-2-102. This account is to be
 25 administered by the department of public health and human services.

26 (2) There must be deposited in the account:

27 (a) money from cigarette taxes deposited under 16-11-119(1)(d);

28 (b) money from taxes on tobacco products other than cigarettes deposited under 16-11-119(3)(b); and

29 (c) any interest and income earned on the account.

30 (3) This account may be used only to provide funding for:

1 (a) the state funds necessary to take full advantage of available federal matching funds in order to
 2 administer the plan and maximize enrollment of eligible children under the healthy Montana kids plan, provided
 3 for under Title 53, chapter 4, part 11, and to provide outreach to the eligible children;

4 (b) a new need-based prescription drug program established by the legislature for children, seniors,
 5 chronically ill, and disabled persons that does not supplant similar services provided under any existing program;

6 (c) increased medicaid services and medicaid provider rates. The increased revenue is intended to
 7 increase medicaid services and medicaid provider rates and not to supplant the general fund in the trended
 8 traditional level of appropriation for medicaid services and medicaid provider rates.

9 (d) an offset to loss of revenue to the general fund as a result of ~~new tax credits~~ premium incentive
 10 payments to eligible small employers;

11 (e) funding new programs to assist eligible small employers with the costs of providing health insurance
 12 benefits to eligible employees; and

13 (f) the cost of administering the insure Montana small business ~~tax credit, the purchasing pool, and the~~
 14 ~~premium incentive payments and premium assistance payments~~ program as provided in Title 33, chapter 22, part
 15 20; ~~and~~

16 ~~— (g) providing a state match for the medicaid program for premium incentive payments or premium~~
 17 ~~assistance payments to the extent that a waiver is granted by federal law as provided in 53-2-216.~~

18 (4) ~~(a)~~ On or before July 1, the budget director shall calculate a balance required to sustain each
 19 program in subsection (3) for each fiscal year of the biennium. If the budget director certifies that the reserve
 20 balance will be sufficient, then the agencies may expend the revenue for the programs as appropriated. If the
 21 budget director determines that the reserve balance of the revenue will not support the level of appropriation, the
 22 budget director shall notify each agency. Upon receipt of the notification, the agency shall adjust the operating
 23 budget for the program to reflect the available revenue as determined by the budget director.

24 ~~(b) Until the programs or credits described in subsections (3)(b) and (3)(d) through (3)(g) are established,~~
 25 ~~the funding must be used exclusively for the purposes described in subsections (3)(a) and (3)(c).~~

26 (5) The phrase "trended traditional level of appropriation", as used in subsection (3)(c), means the
 27 appropriation amounts, including supplemental appropriations, as those amounts were set based on eligibility
 28 standards, services authorized, and payment amount during the past five biennial budgets.

29 (6) The department of public health and human services may adopt rules to implement this section."
 30

