

HOUSE BILL NO. 65

INTRODUCED BY M. REGIER

BY REQUEST OF THE STATE AUDITOR

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5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS PERTAINING TO SERVICE OF
6 PROCESS AND THE STATE AUDITOR; PROVIDING FOR SERVICE OF PROCESS FOR A DOMESTIC
7 INSURER; PROVIDING FOR SERVICE OF PROCESS FOR FOREIGN OR ALIEN INSURERS AND
8 APPOINTMENT OF REGISTERED AGENTS; PROVIDING FOR APPOINTMENT AND FILING FEES;
9 AMENDING SECTIONS 33-1-613, 33-2-115, 33-2-315, 33-2-1216, 33-2-1701, 33-6-101, 33-19-403, 33-28-102,
10 33-28-207, AND 33-31-111, MCA; REPEALING SECTIONS 33-1-601, 33-1-602, AND 33-1-603, MCA; AND
11 PROVIDING AN EFFECTIVE DATE."

12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14
15 NEW SECTION. **Section 1. Service of process -- domestic insurer.** (1) Service of process against
16 a domestic insurer must be made pursuant to 35-7-113 or in any other manner permitted by law.

17 (2) Service of process against a domestic reciprocal insurer must be on the attorney-in-fact or in any
18 other manner permitted by law.

19
20 NEW SECTION. **Section 2. Service of process -- foreign or alien insurer -- appointment of**
21 **registered agent.** (1) A foreign or alien insurer that transacts any business in this state must have a registered
22 agent upon whom any process, notice, or demand required or permitted by law to be served upon a company
23 must be served. The agent must be a person who either resides or maintains a business address in this state.

24 (2) The written appointment of an agent must be provided to the commissioner in a form prescribed by
25 the commissioner, and must, at minimum, include a consent to service of process and the official name and
26 address of the agent and the insurer represented.

27 (3) The commissioner shall keep a record of the foreign and alien insurers transacting business in
28 Montana and the name and address of their registered agents. This record must be made public in a form
29 prescribed by the commissioner.

30 (4) Service of process by mail to a registered agent listed for an insurer is valid service upon that insurer.

1 (5) An insurer may revoke the appointment of an agent by filing with the commissioner a written
 2 appointment of another agent and a statement that the appointment of the former agent is revoked. The authority
 3 of the agent whose appointment has been revoked terminates 30 days after the notice is received by the
 4 commissioner.

5 (6) When a foreign or alien insurer ceases to do business in this state, the agent last designated by or
 6 acting for the insurer is deemed to continue as agent for it unless a new agent is appointed. Service of process
 7 by mail upon any such agent is valid service upon the company.

8 (7) Each insurer shall include a fee of \$10 with any initial appointment, change of agent appointment,
 9 or change of address. The fee is waived for an insurer filing an agent appointment with an original application for
 10 a certificate of authority or an annual renewal.

11 (8) This section does not limit or affect the right to serve any process, notice, or demand upon an insurer
 12 in any other manner permitted by law.

13
 14 **NEW SECTION. Section 3. Service of process without registered agent BY COMMISSIONER.** (1) If a
 15 registered agent cannot be found for a foreign or alien insurer doing business in this state, IF the agent of record
 16 is no longer at the agent's listed address, or IF the insurer has failed to maintain an agent as required by [section
 17 2], OR FOR OTHER GOOD CAUSE SHOWN FOR WHICH A PERSON'S RIGHTS MAY BE ADVERSELY AFFECTED BY INABILITY TO
 18 SERVE AN INSURER, a person desiring to serve process, notice, or demand may initiate service on the
 19 commissioner by providing to the commissioner all of the following:

20 (a) an affidavit stating that one of the conditions in subsection (1) exists and stating the most recent
 21 address of the insurer that the person, after diligent search, has been able to ascertain;

22 (b) two copies of the document to be served on the insurer; and

23 (c) a filing fee of \$50.

24 (2) If the requirements of subsection (1) have been met, the commissioner shall serve process, notice,
 25 or demand by regular mail to the foreign or alien insurer at its principal office as shown in the commissioner's
 26 records. Service upon the insurer is deemed complete after the commissioner has mailed the process, notice,
 27 or demand. The commissioner shall maintain a record of each process, notice, or demand the commissioner
 28 completes under this section.

29

30 **Section 4.** Section 33-1-613, MCA, is amended to read:

1 **"33-1-613. Service of process -- criteria mandating designation of commissioner.** (1) Service of
2 process upon any insurer pursuant to 33-1-612 must be made by delivering to and leaving with the commissioner
3 or some person in apparent charge of the commissioner's office two copies of the process and the payment to
4 the commissioner of ~~fees that may be prescribed by law~~ the same fee as provided in [section 3]. The
5 commissioner shall mail by certified mail one of the copies of the process to the defendant at its principal place
6 of business last known to the commissioner and shall keep a record of any process served upon the
7 commissioner. The service of process is sufficient if notice of the service and a copy of the process are sent
8 within 10 days by certified mail by the plaintiff's attorney to the defendant at its last-known principal place of
9 business and the defendant's receipt or receipt issued by the post office with which the letter is registered,
10 showing the name of the sender of the letter and the name and address of the person to whom the letter is
11 addressed, and the affidavit of the plaintiff's attorney showing a compliance with this section are filed with the
12 clerk of the court in which the action is pending on or before the date the defendant is required to appear or within
13 further time that the court may allow.

14 (2) Service of process in any action, suit, or proceeding must in addition to the manner provided in
15 subsection (1) be valid if:

16 (a) served upon any person within this state who in this state on behalf of the insurer is:

17 (i) soliciting insurance;

18 (ii) making any contract of insurance or issuing or delivering any policies or written contracts of insurance;

19 or

20 (iii) collecting or receiving any premium for insurance;

21 (b) a copy of the process is sent within 10 days by certified mail by the plaintiff's attorney to the defendant
22 at the last-known principal place of business of the defendant; and

23 (c) the defendant's receipt or the receipt issued by the post office with which the letter is registered,
24 showing the name of the sender of the letter and the name and address of the person to whom the letter is
25 addressed, and the affidavit of the plaintiff's attorney showing a compliance with this section are filed with the
26 clerk of the court in which the action is pending on or before the date the defendant is required to appear or within
27 further time that the court may allow.

28 (3) A plaintiff or complainant may not be entitled to a judgment by default under this section until the
29 expiration of 30 days from the date of the filing of the affidavit of compliance.

30 (4) This section does not limit or abridge the right to serve any process, notice, or demand upon any

1 insurer in any other manner now or later permitted by law."

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3 **Section 5.** Section 33-2-115, MCA, is amended to read:

4 **"33-2-115. Application for certificate of authority.** To apply for an original certificate of authority, an
5 insurer shall file with the commissioner its application accompanied by the applicable fees as specified in
6 33-2-708, showing its name, location of its home office or principal office in the United States, if an alien insurer,
7 kinds of insurance to be transacted, date of organization or incorporation, form of organization, state or country
8 of domicile, and any additional information that the commissioner may reasonably require. The application must
9 be accompanied by the following documents, as applicable:

10 (1) if a foreign insurer, a copy of its corporate charter or articles of incorporation, with all amendments,
11 certified by the public officer with whom the originals are on file in the state or country of domicile;

12 (2) if a mutual insurer, a copy of its bylaws as amended, certified by its secretary or other officer having
13 custody of the bylaws;

14 (3) if a reciprocal insurer, copies of the power of attorney of its attorney-in-fact and of its subscribers'
15 agreement, if any, certified by its attorney-in-fact;

16 (4) a copy of its financial statement as of the preceding December 31, sworn to by at least two executive
17 officers of the insurer or certified by the public insurance supervisory official of the insurer's state of domicile or
18 of entry into the United States;

19 (5) a copy of report of last examination, if any, made of the insurer, certified by the insurance supervisory
20 official of its state of domicile or of entry into the United States;

21 (6) if a foreign or alien insurer, appointment of the commissioner pursuant to 33-1-601, as its attorney
22 to a registered agent to receive service of legal process pursuant to [section 2];

23 (7) if a foreign or alien insurer, a certificate of the public official having supervision of insurance in its
24 state or country of domicile or state of entry into the United States, showing that it is authorized to transact the
25 kinds of insurance proposed to be transacted in this state;

26 (8) if an alien insurer, a copy of the appointment and authority of its United States manager, certified by
27 its officer having custody of its records;

28 (9) if a foreign insurer, certificate as to deposit if to be tendered pursuant to 33-2-111;

29 (10) if a domestic insurer, specimen copies of policies proposed to be offered in this state, together with
30 premiums or premium rates applicable, or a declaration that the rates as applicable will be those promulgated

1 by designated rating organizations authorized to file the rates in this state on behalf of the insurer."

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3 **Section 6.** Section 33-2-315, MCA, is amended to read:

4 **"33-2-315. ~~Commissioner appointed process agent -- service~~Service of process.** (1) Every surplus
5 lines insurer before transacting surplus lines insurance under this part shall designate a registered agent with the
6 commissioner as provided in [section 2] ~~in writing appoint the commissioner as its true and lawful attorney upon~~
7 ~~whom legal process in any action or proceeding against it in this state shall be served and in such writing shall~~
8 ~~agree that any such process served upon such attorney shall be of the same legal force and validity as if served~~
9 ~~in this state upon such insurer and that such authority shall continue in force so long as any liability remains~~
10 ~~outstanding against it in this state. At the time of filing such appointment, the insurer shall also file designation~~
11 ~~of the name and address of the person to whom process against it served upon the commissioner is to be~~
12 ~~forwarded. The insurer may change such designation by a new filing.~~

13 (2) Service upon such an insurer must be made pursuant to [section 2] or [section 3] ~~upon the~~
14 ~~commissioner and in accordance with the procedures, requirements, and results as provided under 33-1-603."~~

15

16 **Section 7.** Section 33-2-1216, MCA, is amended to read:

17 **"33-2-1216. Credit allowed domestic ceding insurer.** (1) Credit for reinsurance is allowed to a
18 domestic ceding insurer as either an asset or a reduction from liability on account of reinsurance ceded only when
19 the reinsurer meets the requirements of subsection (2), (3), (4), (5), or (6). Credit must be allowed under
20 subsection (2), (3), or (4) only in respect to cessions of those kinds or classes of business that the assuming
21 insurer is licensed or otherwise permitted to write or assume in its state of domicile or, in the case of a U.S.
22 branch of an alien assuming insurer, in the state through which the branch of the alien assuming insurer entered
23 and is licensed to transact insurance or reinsurance. If the requirements of subsection (4) or (5) are met, the
24 requirements of subsection (7) must also be met.

25 (2) Credit must be allowed when the reinsurance is ceded to an assuming insurer that is licensed to
26 transact insurance or reinsurance in this state.

27 (3) Credit must be allowed when the reinsurance is ceded to an assuming insurer that is accredited by
28 the commissioner as a reinsurer in this state. Credit may not be allowed a domestic ceding insurer if the assuming
29 insurer's accreditation has been revoked by the commissioner after notice and hearing. An accredited reinsurer
30 is one that:

- 1 (a) files with the commissioner evidence of its submission to this state's jurisdiction;
- 2 (b) submits to this state's authority to examine its books and records;
- 3 (c) is licensed to transact insurance or reinsurance in at least one state or, in the case of a United States
4 branch of an alien assuming insurer, is entered through and licensed to transact insurance or reinsurance in at
5 least one state;
- 6 (d) files annually with the commissioner a copy of its annual statement filed with the insurance
7 department of its state of domicile and a copy of its most recent audited financial statement; and
- 8 (e) demonstrates to the satisfaction of the commissioner that the accredited reinsurer has adequate
9 financial capacity to meet its reinsurance obligations and is otherwise qualified to assume reinsurance from
10 domestic insurers. An assuming insurer meets this requirement as of the time of its application if:
- 11 (i) the assuming accredited reinsurer maintains a surplus as regards policyholders in an amount not less
12 than \$20 million; and
- 13 (ii) the commissioner approves its accreditation within 90 days after the date that the accredited reinsurer
14 submits its application.
- 15 (4) (a) Subject to subsection (4)(b), credit must be allowed when:
- 16 (i) the reinsurance is ceded to an assuming insurer that is domiciled and licensed in or, in the case of
17 a United States branch of an alien assuming insurer, is entered through a state that employs standards regarding
18 credit for reinsurance substantially similar to those applicable under this statute; and
- 19 (ii) the assuming insurer or the United States branch of an alien assuming insurer:
- 20 (A) maintains a surplus with regard to policyholders in an amount not less than \$20 million; and
- 21 (B) submits to the authority of this state to examine its books and records.
- 22 (b) The requirement of subsection (4)(a)(i) does not apply to reinsurance ceded and assumed pursuant
23 to pooling arrangements among insurers in the same holding company system.
- 24 (5) (a) Credit must be allowed when the reinsurance is ceded to an assuming insurer that maintains a
25 trust fund in a qualified United States financial institution for the payment of the valid claims of its United States
26 policyholders and ceding insurers and their assigns and successors in interest. The assuming insurer shall report
27 annually to the commissioner information substantially the same as that required to be reported on the NAIC
28 annual statement form by licensed insurers to enable the commissioner to determine the sufficiency of the trust
29 fund. The assuming insurer shall submit to examination of its books and records by the commissioner and shall
30 bear the expense of examination.

1 (b) (i) In the case of a single assuming insurer, the trust must consist of a trustee account representing
2 the assuming insurer's liabilities attributable to business written in the United States, and in addition, the assuming
3 insurer shall maintain a surplus with the trustee of not less than \$20 million, except as provided in subsection
4 (5)(b)(ii).

5 (ii) At any time after the assuming insurer has permanently discontinued underwriting new business
6 secured by the trust for at least 3 full years, the insurance regulator with principal regulatory oversight of the trust
7 may authorize a reduction in the required trustee surplus after a finding that the new required surplus level is
8 adequate for the protection of United States ceding insurers, policyholders, and claimants in light of reasonably
9 foreseeable adverse loss development. The risk assessment may involve an actuarial review, including an
10 independent analysis of reserves and cash flows. The risk assessment must consider all material risk factors,
11 including, when applicable, the lines of business involved, the stability of the incurred loss estimates, and the
12 effect of the surplus requirements on the assuming insurer's liquidity or solvency. The minimum required trustee
13 surplus may not be reduced to an amount less than 30% of the assuming insurer's liabilities attributable to
14 reinsurance ceded by United States ceding insurers covered by the trust.

15 (iii) In the case of a group, including incorporated and individual unincorporated underwriters, the trust
16 must consist of a trustee account representing the respective underwriters' liabilities attributable to business
17 written in the United States to any underwriter of the group. Additionally, the group shall maintain a surplus with
18 the trustee of which \$100 million must be held jointly for the benefit of United States ceding insurers of any
19 member of the group. The incorporated members of the group, as group members, may not be engaged in a
20 business other than underwriting as members of the group and are subject to the same level of solvency
21 regulation and control by the insurance regulator as the unincorporated members. The group shall make available
22 to the commissioner an annual certification of the solvency of each underwriter by the insurance regulator and
23 the independent public accountants in the jurisdiction where the underwriter is domiciled.

24 (iv) In the case of a group of incorporated insurers under common administration:

25 (A) the provisions of subsection (5)(b)(iv)(B) apply to the group that:

26 (I) complies with the reporting requirements contained in subsection (5)(a);

27 (II) has continuously transacted an insurance business outside the United States for at least 3 years
28 immediately prior to making application for accreditation;

29 (III) submits to this state's authority to examine its books and records and bears the expense of the
30 examination; and

1 (IV) has aggregate policyholders' surplus of \$10 billion;

2 (B) (I) the trust must be in an amount equal to the group's several liabilities attributable to business ceded
3 by United States ceding insurers to any member of the group pursuant to reinsurance contracts issued in the
4 name of the group;

5 (II) the group shall maintain a joint surplus with a trustee of which \$100 million is held jointly for the benefit
6 of United States ceding insurers of any member of the group as additional security for any liabilities; and

7 (III) each member of the group shall make available to the commissioner an annual certification of the
8 member's solvency by the insurance regulator and the independent public accountants in the jurisdiction where
9 the underwriter is domiciled.

10 (c) The trust must be established in a form approved by the commissioner. The trust instrument must
11 provide that contested claims are valid and enforceable upon the final order of any court of competent jurisdiction
12 in the United States. The trust must vest legal title to its assets in the trustees of the trust for its United States
13 policyholders and ceding insurers and their assigns and successors in interest. The trust and the assuming
14 insurer are subject to examination as determined by the commissioner. The trust described in this subsection
15 (5)(c) must remain in effect for as long as the assuming insurer has outstanding obligations due under the
16 reinsurance agreements subject to the trust.

17 (d) No later than February 28 of each year, the trustees of the trust shall report to the commissioner in
18 writing setting forth the balance of the trust and listing the trust's investments at the end of the preceding year.
19 The trustees shall certify the date of termination of the trust, if planned, or certify that the trust may not expire prior
20 to the following December 31.

21 (e) (i) The commissioner shall allow credit when the reinsurance is ceded to an assuming insurer that
22 the commissioner has certified as a reinsurer in this state and secures its obligation in accordance with the
23 requirements of this subsection (5)(e).

24 (ii) To be eligible for certification under this subsection (5)(e), an assuming insurer must be domiciled and
25 licensed to transact insurance or reinsurance in a qualified jurisdiction as determined by the commissioner
26 pursuant to subsection (5)(e)(iv) and shall:

27 (A) maintain minimum capital and surplus or its equivalent as promulgated by the commissioner by rule;

28 (B) maintain financial strength ratings from two or more rating agencies, as determined by the
29 commissioner;

30 (C) agree to the jurisdiction of this state;

1 (D) appoint ~~the commissioner as its~~ a registered agent for service of process in this state as required
2 by [section 2];

3 (E) agree to provide security for 100% of the assuming insurer's liabilities attributable to reinsurance
4 ceded by United States ceding insurers if the assuming insurer resists enforcement of a final judgment from within
5 the United States;

6 (F) agree to meet applicable information filing requirements as determined by the commissioner; and

7 (G) satisfy any other requirements for certification considered relevant by the commissioner.

8 (iii) An association, including incorporated and individual unincorporated underwriters, may be a certified
9 reinsurer. The incorporated members of the association may not engage in any business other than underwriting
10 as a member of the association. The incorporated members are subject to the same level of regulation and
11 solvency control by the association's domiciliary regulator as are the unincorporated members. In order to be
12 eligible for certification under this subsection (5)(e)(iii), the association shall satisfy the requirements of this
13 subsection (5)(e) and shall:

14 (A) satisfy its minimum capital and surplus requirements through the capital and surplus equivalents as
15 a net of liabilities of the association and its members. This provision must include use of a joint central fund that
16 may be applied to any unsatisfied obligation of the association or any of its members in an amount that provides
17 adequate protection as determined by the commissioner.

18 (B) provide to the commissioner, within 90 days of the date its financial statements are due to be filed
19 with the association's domiciliary regulator, an annual certification by the association's domiciliary regulator of
20 the solvency of each underwriter member. If a certification is unavailable, the association may provide a financial
21 statement prepared by independent public accountants of each underwriter member.

22 (iv) The commissioner shall create, maintain, and publish a list of qualified jurisdictions under which an
23 assuming insurer licensed and domiciled in a qualified jurisdiction is eligible to be considered for certification as
24 a certified reinsurer. The commissioner shall certify all United States jurisdictions as long as those jurisdictions
25 are accredited under the NAIC financial standards and accreditation program. For jurisdictions not in the United
26 States, the commissioner may defer to a list of qualified jurisdictions published by the NAIC or, if the
27 commissioner does not defer to the NAIC list, shall develop a list of qualified jurisdictions by considering:

28 (A) the reinsurance supervisory system of the jurisdiction;

29 (B) the rights, benefits, and extent of reciprocal recognition afforded by the jurisdiction to reinsurers
30 licensed and domiciled within the United States;

- 1 (C) whether an NAIC-accredited jurisdiction has certified the reinsurer; and
- 2 (D) any additional factors the commissioner considers relevant.
- 3 (v) If the commissioner approves a jurisdiction as qualified that does not appear on the list of qualified
- 4 jurisdictions published by the NAIC, the commissioner shall provide thoroughly documented justification in
- 5 accordance with the criteria listed under subsection (5)(e)(iv).
- 6 (vi) Qualified jurisdictions under subsection (5)(e)(iv) shall agree to share information and cooperate with
- 7 the commissioner with respect to all certified reinsurers domiciled within that jurisdiction.
- 8 (vii) The commissioner may not approve a jurisdiction not in the United States if the commissioner
- 9 determines that the jurisdiction does not adequately and promptly enforce final United States judgments and
- 10 arbitration awards.
- 11 (viii) If a certified reinsurer's domiciliary jurisdiction ceases to be a qualified jurisdiction, the commissioner
- 12 may either suspend the reinsurer's certification indefinitely or revoke the certification entirely.
- 13 (ix) The commissioner shall assign a rating to each certified reinsurer. In assigning a rating, the
- 14 commissioner shall consider the financial strength ratings assigned by agencies approved by the commissioner.
- 15 The commissioner shall publish a list of all certified reinsurers and their ratings. The commissioner may defer to
- 16 a rating assigned by a jurisdiction accredited by the NAIC.
- 17 (x) A certified reinsurer shall secure obligations assumed from United States ceding insurers under this
- 18 subsection (5)(e)(x) at a level consistent with the certified reinsurer's rating. A domestic ceding insurer qualifies
- 19 for full financial statement credit for reinsurance ceded to a certified reinsurer if the certified reinsurer:
- 20 (A) maintains security in a form acceptable to the commissioner and in accord with the provisions of this
- 21 section; or
- 22 (B) forms a multibeneficiary trust in accord with subsections (5)(a) through (5)(d), except that minimum
- 23 trustee surplus requirements as provided in subsection (5)(b) do not apply with respect to a multibeneficiary trust
- 24 account maintained by a certified reinsurer for the purpose of securing obligations incurred under this subsection
- 25 (5)(e)(x). A multibeneficiary trust under this subsection (5)(e)(x)(B) must be maintained with a minimum trustee
- 26 surplus of \$10 million.
- 27 (xi) A certified reinsurer operating under subsection (5)(e)(x)(B) shall maintain separate trust accounts
- 28 for its obligations incurred under reinsurance agreements issued or renewed as a certified reinsurer with reduced
- 29 security as permitted by this subsection (5)(e) or comparable laws of other United States jurisdictions.
- 30 (xii) If obligations incurred by a certified reinsurer under this subsection (5)(e) lack sufficient security, the

1 commissioner shall reduce the allowable credit by an amount proportionate to the deficiency. The commissioner
2 may impose further reductions in allowable credit upon finding that there is a material risk that the certified
3 reinsurer's obligations will not be paid in full when due.

4 (xiii) For the purposes of this subsection (5)(e), a certified reinsurer whose certification has been
5 terminated for any reason must be treated as a certified reinsurer required to secure 100% of its obligations. If
6 the commissioner assigns a higher rating to a certified reinsurer on inactive status pursuant to this subsection
7 (5)(e)(xiii), this subsection (5)(e)(xiii) does not apply. As used in this subsection (5)(e)(xiii), "terminated" refers
8 to a reinsurer whose certificate of authority has been revoked, suspended, voluntarily surrendered, or put on
9 inactive status.

10 (xiv) A certified reinsurer that ceases to assume new business in this state may request to maintain its
11 certification in inactive status in order to continue to qualify for a reduction in security for its in-force business. An
12 inactive certified reinsurer shall continue to comply with all applicable requirements of this subsection (5)(e), and
13 the commissioner shall assign a rating that takes into account, if relevant, the reasons the reinsurer is not
14 assuming new business.

15 (6) Credit must be allowed when the reinsurance is ceded to an assuming insurer that does not meet
16 the requirements of subsection (2), (3), (4), or (5), but only with respect to the insurance of risks located in a
17 jurisdiction in which the reinsurance is required by applicable law or regulation of that jurisdiction.

18 (7) (a) If the assuming insurer is not licensed, accredited, or certified to transact insurance or reinsurance
19 in this state, the credit permitted by subsections (4) and (5) may not be allowed unless the assuming insurer
20 agrees in the reinsurance agreements to the following provisions:

21 (i) upon the failure of the assuming insurer to perform its obligations under the terms of the reinsurance
22 agreement, the assuming insurer, at the request of the ceding insurer, shall:

23 (A) submit to the jurisdiction of any court of competent jurisdiction in any state of the United States;

24 (B) comply with all requirements necessary to give the court jurisdiction; and

25 (C) abide by the final decision of the court or of any appellate court in the event of an appeal; and

26 (ii) the assuming insurer shall designate the commissioner or a designated attorney as its attorney upon
27 whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the ceding
28 insurer.

29 (b) Subsection (7)(a)(i) is not intended to conflict with or override the obligation of the parties to a
30 reinsurance agreement to arbitrate their disputes if an obligation is created in the agreement.

1 (8) (a) If the assuming insurer does not meet the requirements of subsection (1), (2), or (3), the credit
2 permitted by subsection (4) or (5) may not be allowed unless the assuming insurer agrees in the trust agreements
3 to the conditions under subsections (8)(b) through (8)(d).

4 (b) Regardless of any other provisions in the trust instrument, the trustee shall comply with an order of
5 the commissioner or with an order of a court of competent jurisdiction directing the trustee to transfer to the
6 commissioner all assets of the trust fund if:

7 (i) the trust fund is inadequate because the trust fund contains an amount less than the required amount;

8 or

9 (ii) the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation,
10 liquidation, or similar proceedings.

11 (c) The assets transferred under subsection (8)(a) must be distributed by the commissioner. Claims must
12 be filed with and valued by the commissioner in accordance with the laws of the state in which the trust is
13 domiciled and that apply to the liquidation of domestic insurers.

14 (d) The commissioner may determine that the assets of the trust fund or any part of the trust fund assets
15 are not necessary to satisfy the claims of the United States ceding insurers of the grantor of the trust. If the
16 commissioner makes this determination, the commissioner shall return the assets or part of the assets to the
17 trustee for distribution in accordance with the trust agreement.

18 (9) (a) The commissioner may suspend or revoke a reinsurer's accreditation or certification if the
19 reinsurer ceases to meet the requirements of this section. The commissioner shall give the reinsurer notice and
20 opportunity for a hearing. The suspension or revocation may not take effect until after the commissioner's order
21 on hearing unless:

22 (i) the reinsurer waives its right to a hearing;

23 (ii) the commissioner's order is based on:

24 (A) regulatory action by the reinsurer's domiciliary jurisdiction; or

25 (B) the voluntary surrender or termination of the reinsurer's eligibility to transact insurance or reinsurance
26 business in its domiciliary jurisdiction; or

27 (iii) the commissioner finds that an emergency requires immediate action.

28 (b) While a reinsurer's accreditation or certification is suspended, no reinsurance contract issued or
29 renewed after the effective date of the suspension qualifies for credit under this section except to the extent that
30 the reinsurer's obligations under the contract are secured in accordance with this section. If a reinsurer's

1 accreditation or certification is revoked, no credit for reinsurance may be granted after the effective date of the
 2 revocation except to the extent that the reinsurer's obligations under the contract are secured in accordance with
 3 33-2-1217 and subsection (5)(e)(x) of this section.

4 (10) (a) A ceding insurer shall take steps:

5 (i) to manage the reinsurance recoverables proportionate to the ceding insurer's own book of business.

6 A domestic ceding insurer shall provide notice to the commissioner within 30 days after:

7 (A) the reinsurance recoverables from any single assuming insurer or group of affiliated assuming
 8 insurers exceeds 50% of the domestic ceding insurer's last reported surplus to policyholders; or

9 (B) a determination that the reinsurance recoverables from any single assuming insurer or group of
 10 affiliated assuming insurers is likely to exceed the limit in subsection (10)(a)(i)(A).

11 (ii) to diversify its reinsurance program. A domestic ceding insurer shall notify the commissioner within
 12 30 days after ceding to any single assuming insurer or group of affiliated assuming insurers more than 20% of
 13 the ceding insurer's gross written premium in the prior calendar year or after the domestic ceding insurer has
 14 determined that the reinsurance ceded to any single assuming insurer or group of affiliated assuming insurers
 15 is likely to exceed the 20% limit.

16 (b) The notifications made pursuant to this subsection (10) must demonstrate that the exposure is safely
 17 managed by the domestic ceding insurer.

18 (11) A reinsurance contract issued or renewed after the effective date of a suspension or revocation does
 19 not qualify for credit except to the extent that the reinsurer's obligations under the contract are secured in
 20 accordance with this section."

21

22 **Section 8.** Section 33-2-1701, MCA, is amended to read:

23 **"33-2-1701. Licensure of reinsurance intermediaries.** (1) A person, firm, association, or corporation
 24 may not act as a reinsurance intermediary-broker in this state if the reinsurance intermediary-broker maintains
 25 an office directly, as a member or employee of a firm or association, or as an officer, director, or employee of a
 26 corporation:

27 (a) in this state, unless the reinsurance intermediary-broker is a licensed producer in this state; or

28 (b) in another state, unless the reinsurance intermediary-broker is a licensed producer in this state or
 29 another state that has a law substantially similar to this law or unless the reinsurance intermediary-broker is
 30 licensed in this state as a nonresident reinsurance intermediary.

- 1 (2) A person, firm, association, or corporation may not act as a reinsurance intermediary-manager:
- 2 (a) for a reinsurer domiciled in this state, unless the reinsurance intermediary-manager is a licensed
- 3 producer in this state;
- 4 (b) in this state, if the reinsurance intermediary-manager maintains an office either directly or as a
- 5 member or employee of a firm or association or as an officer, director, or employee of a corporation in this state,
- 6 unless the reinsurance intermediary-manager is a licensed producer in this state; or
- 7 (c) in another state for a nondomestic insurer, unless the reinsurance intermediary-manager is a licensed
- 8 producer in this state or another state that has a law substantially similar to this law or unless the person is
- 9 licensed in this state as a nonresident insurance intermediary.
- 10 (3) Subject to subsection (2), the commissioner may require a reinsurance intermediary-manager to:
- 11 (a) file a bond in an amount from an insurer acceptable to the commissioner for the protection of the
- 12 reinsurer; and
- 13 (b) maintain a policy on errors and omissions in an amount acceptable to the commissioner.
- 14 (4) (a) The commissioner may issue a reinsurance intermediary license to any person, firm, association,
- 15 or corporation that has complied with the requirements of this part. A license issued to a firm or association
- 16 authorizes all the members of the firm or association and any designated employees to act as reinsurance
- 17 intermediaries under the license. All authorized persons must be named in the application and in any
- 18 supplements to the application. A license issued to a corporation must authorize all of the officers and any
- 19 designated employees and directors to act as reinsurance intermediaries on behalf of the corporation. All
- 20 authorized persons must be named in the application and in any supplements to the application.
- 21 (b) If the applicant for a reinsurance intermediary license is a nonresident, the applicant, as a condition
- 22 precedent to receiving or holding a license, shall ~~designate the commissioner as the~~ appoint an agent for service
- 23 of process in the manner provided for by ~~this title for designation of service of process upon unauthorized insurers~~
- 24 [section 2]. ~~The applicant shall also furnish the commissioner with the name and address of a resident of this~~
- 25 ~~state upon whom notices or orders of the commissioner or process affecting the nonresident reinsurance~~
- 26 ~~intermediary may be served.~~ The licensee shall promptly notify the commissioner in writing of each change in its
- 27 ~~designated~~ appointed agent for service of process, and the change may not become effective until acknowledged
- 28 by the commissioner.
- 29 (5) (a) The commissioner may refuse to issue a reinsurance intermediary license if, in the
- 30 commissioner's judgment:

1 (i) the applicant, a person named on the application, or a member, principal, officer, or director of the
2 applicant is not trustworthy;

3 (ii) a controlling person of the applicant is not trustworthy to act as a reinsurance intermediary; or

4 (iii) any of the persons listed in subsection (5)(a)(i) or (5)(a)(ii) has given cause for revocation or
5 suspension of the license or has failed to comply with any prerequisite for the issuance of the license.

6 (b) Upon written request, the commissioner shall furnish a summary of the basis for refusal to issue a
7 license.

8 (6) Licensed attorneys of this state, when acting in their professional capacity, are exempt from this
9 section."

10

11 **Section 9.** Section 33-6-101, MCA, is amended to read:

12 **"33-6-101. Scope of chapter -- provisions applicable.** (1) This chapter applies only to benevolent
13 associations.

14 (2) The provisions of this title do not apply to any benevolent association unless contained or referred
15 to in this chapter.

16 (3) In addition to the provisions contained in this chapter, other chapters and provisions of this title shall
17 apply to benevolent associations, to the extent applicable, as follows: parts 1, 2, 3, 4, 5, 6, and 7 of chapter 1;
18 ~~33-1-601 through 33-1-603~~; 33-2-101; 33-2-107; 33-2-112; 33-2-117 through 33-2-121; 33-2-501; 33-2-502;
19 chapter 2, part 13; 33-2-1207; 33-3-308; 33-3-401; 33-3-402; 33-3-436; 33-12-105; chapter 15; chapter 18;
20 33-22-304; and 33-22-506."

21

22 **Section 10.** Section 33-19-403, MCA, is amended to read:

23 **"33-19-403. Service of process -- insurance-support organizations.** For the purpose of this chapter,
24 an insurance-support organization transacting business outside this state that has an effect on a person residing
25 in this state is considered to have appointed the commissioner to accept service of process on its behalf. The
26 party seeking service and the commissioner shall mail a copy of the notice by registered mail to the
27 insurance-support organization at its last-known principal place of business. The return postcard receipt for such
28 mailing is sufficient proof that the same was properly mailed by the commissioner follow the procedure in [section
29 3] to effectuate service."

30

1 **Section 11.** Section 33-28-102, MCA, is amended to read:

2 **"33-28-102. Certificates of authority -- lines of business -- definition.** (1) A captive insurance
3 company, when permitted by its organizational document, may apply to the commissioner for a certificate of
4 authority to provide property insurance, casualty insurance, life insurance, disability income insurance, surety
5 insurance, marine insurance, and health insurance coverage or a group health plan as defined in 33-22-140,
6 except that:

7 (a) a pure captive insurance company may not insure any risks other than those of its parent and
8 affiliated companies and controlled unaffiliated business entities;

9 (b) an industrial insured captive insurance company may not insure any risks other than those of the
10 industrial insureds that comprise the industrial insured group and their affiliated companies;

11 (c) an association captive insurance company may not insure any risks other than those of the members
12 or affiliated companies of members;

13 (d) a special purpose captive insurance company may not provide insurance or reinsurance for risks
14 unless approved by the commissioner;

15 (e) a captive insurance company or a branch captive insurance company may not:

16 (i) provide personal lines of insurance, including but not limited to motor vehicle or homeowner's
17 insurance coverage or any component of those coverages;

18 (ii) accept or cede reinsurance except as provided in 33-28-203;

19 (iii) provide health insurance coverage or a group health plan unless the captive insurance company or
20 branch captive insurance company is only providing health insurance coverage or a group health plan for the
21 parent company and its affiliated companies; or

22 (iv) write workers' compensation insurance on a direct basis; and

23 (f) a protected cell captive insurance company may not insure any risks other than those of its
24 participants.

25 (2) A captive insurance company may not write any insurance business unless:

26 (a) it first obtains from the commissioner a certificate of authority under this section;

27 (b) its board of directors, board of managing members, or a reciprocal insurer's subscribers' advisory
28 committee holds at least one meeting each year in this state;

29 (c) it maintains its principal place of business in this state; and

30 (d) it ~~appoints~~ designates a registered agent to accept service of process, files the name and contact

1 information and any subsequent changes regarding the registered agent with the commissioner, and agrees that
2 whenever the registered agent cannot be found with reasonable diligence, the commissioner's office may act as
3 an agent of the captive insurance company with respect to any action or proceeding and may be served in
4 accordance with ~~33-1-603~~ [section 2] and [section 3].

5 (3) (a) Before receiving a certificate of authority, a captive insurance company shall:

6 (i) with respect to a captive insurance company formed as a business entity:

7 (A) file with the commissioner a certified copy of its organizational documents, a statement under oath
8 of an officer of the business entity showing its financial condition, and any other statements or documents
9 required by the commissioner; and

10 (B) submit to the commissioner for approval a description of the coverages, deductibles, coverage limits,
11 and rates, together with any additional information that the commissioner may reasonably require;

12 (ii) with respect to a captive insurance company formed as a reciprocal insurer:

13 (A) file with the commissioner a certified copy of the power of attorney of its attorney-in-fact, a certified
14 copy of its subscribers' agreement, a statement under oath of its attorney-in-fact showing its financial condition,
15 and any other statements or documents required by the commissioner; and

16 (B) submit to the commissioner for approval a description of the coverages, deductibles, coverage limits,
17 and rates, together with any additional information that the commissioner may reasonably require.

18 (b) If there is a subsequent material change in any of the items in the description provided for in
19 subsection (3)(a), the captive insurance company shall submit to the commissioner for approval an appropriate
20 revision and may not offer any additional kinds of insurance until the commissioner approves a revision of the
21 description. The captive insurance company shall inform the commissioner of any change in rates within 30 days
22 of the adoption of the change.

23 (c) In addition to the information required by subsections (3)(a) and (3)(b), each applicant captive
24 insurance company shall file with the commissioner evidence of the following:

25 (i) the amount and liquidity of its assets relative to the risks to be assumed;

26 (ii) the adequacy of the expertise, experience, and character of the person or persons who will manage
27 it;

28 (iii) the overall soundness of its plan of operation;

29 (iv) the adequacy of the loss prevention programs of its parent, members, or industrial insureds as
30 applicable; and

1 (v) any other factors considered relevant by the commissioner in ascertaining whether the proposed
2 captive insurance company will be able to meet its policy obligations.

3 (d) In addition to the information required by this section, each applicant that is a protected cell captive
4 insurance company shall file with the commissioner the following:

5 (i) a business plan demonstrating how the applicant will account for the loss and expense experience
6 of each protected cell at a level of detail found to be sufficient by the commissioner and how it will report the
7 experience to the commissioner;

8 (ii) a statement acknowledging that all financial records of the protected cell captive insurance company,
9 including records pertaining to any protected cells, must be made available for inspection or examination by the
10 commissioner or the commissioner's designated agent;

11 (iii) all contracts or sample contracts between the protected cell captive insurance company and any
12 participants; and

13 (iv) evidence that expenses will be allocated to each protected cell in a fair and equitable manner.

14 (e) Information submitted pursuant to this subsection (3) must remain confidential and may not be made
15 public by the commissioner or an employee or agent of the commissioner without the written consent of the
16 company, except that:

17 (i) the information may be discoverable by a party in a civil action or contested case to which the captive
18 insurance company that submitted the information is a party, upon a showing by the party seeking to discover
19 the information that the information sought is relevant to and necessary for the furtherance of the action or case,
20 the information sought is unavailable from other nonconfidential sources, and a subpoena issued by a judicial
21 or administrative officer of competent jurisdiction has been submitted to the commissioner;

22 (ii) the commissioner may, in the commissioner's discretion, disclose the information to a public officer
23 having jurisdiction over the regulation of insurance in another state or to a public official of the federal
24 government, as long as the public official agrees in writing to maintain the confidentiality of the information and
25 the laws of the state in which the public official serves, if applicable, require the information to be and to remain
26 confidential.

27 (4) (a) Each captive insurance company shall pay to the commissioner a nonrefundable fee of \$200 for
28 the examining, investigating, and processing of its application, and the commissioner is authorized to retain legal,
29 financial, and examination services from outside the department, the reasonable cost of which may be charged
30 to the applicant.

1 (b) The provisions of Title 33, chapter 1, part 4, apply to examinations, investigations, and processing
 2 conducted under the authority of this section. In addition, each captive insurance company shall pay a fee for the
 3 year of registration and a renewal fee for each subsequent year of \$300. Individual series of members as defined
 4 in 35-8-102 of a limited liability company formed as a special purpose captive insurance company, incorporated
 5 protected cells, and unincorporated protected cells are not required to pay the registration or renewal fee under
 6 this subsection (4)(b).

7 (5) If the commissioner is satisfied that the documents and statements that the applicant captive
 8 insurance company has filed comply with the provisions of this chapter and applicable provisions of Title 33, the
 9 commissioner may grant a certificate authorizing the company to do insurance business in this state. The
 10 certificate is effective until March 1 of each year and may be renewed upon proper compliance with this chapter."
 11

12 **Section 12.** Section 33-28-207, MCA, is amended to read:

13 **"33-28-207. Applicable laws.** (1) The following apply to captive insurance companies:

14 (a) the definitions of commissioner and department provided in 33-1-202, property insurance provided
 15 in 33-1-210, casualty insurance provided in 33-1-206, life insurance provided in 33-1-208, health insurance
 16 coverage and group health plans provided in 33-22-140, and disability income insurance provided in 33-1-235;

17 (b) the limitation provided in 33-2-705 on the imposition of other taxes;

18 (c) the provisions relating to supervision, rehabilitation, and liquidation of insurance companies as
 19 provided for in Title 33, chapter 2, part 13;

20 (d) the provisions of 33-1-311, ~~33-1-603~~, [section 1], [section 2], [section 3], 33-3-431, 33-18-201,
 21 33-18-203, 33-18-205, and 33-18-242;

22 (e) the provisions relating to dissolution and liquidation in Title 33, chapter 3, part 6, except that a pure
 23 captive insurance company may proceed with voluntary dissolution and liquidation after prior notice to and
 24 approval of the commissioner without following the provisions of Title 33, chapter 3, part 6; and

25 (f) the authority of the commissioner under 33-2-701(6) to impose a fine for failure to timely file an annual
 26 statement, except that the annual statement requirements in 33-28-107 apply.

27 (2) This chapter may not be construed as exempting a captive insurance company, its parent, or affiliated
 28 companies from compliance with the laws governing workers' compensation insurance.

29 (3) A captive insurance company or branch captive insurance company that writes health insurance
 30 coverage or group health plans as defined in 33-22-140 shall comply with applicable state and federal laws.

- 1 (4) The following provisions apply to captive risk retention groups:
2 (a) those relating to actuarial opinions in Title 33, chapter 1, part 14;
3 (b) those relating to risk-based capital in Title 33, chapter 2, part 19; and
4 (c) those relating to insurance holding company systems in Title 33, chapter 2, part 11.
5 (5) Except as expressly provided in this chapter, the provisions of Title 33 do not apply to captive
6 insurance companies."

7

8 **Section 13.** Section 33-31-111, MCA, is amended to read:

9 **"33-31-111. Statutory construction and relationship to other laws.** (1) Except as otherwise provided
10 in this chapter, the insurance or health service corporation laws do not apply to a health maintenance organization
11 authorized to transact business under this chapter. This provision does not apply to an insurer or health service
12 corporation licensed and regulated pursuant to the insurance or health service corporation laws of this state
13 except with respect to its health maintenance organization activities authorized and regulated pursuant to this
14 chapter.

15 (2) Solicitation of enrollees by a health maintenance organization granted a certificate of authority or its
16 representatives is not a violation of any law relating to solicitation or advertising by health professionals.

17 (3) A health maintenance organization authorized under this chapter is not practicing medicine and is
18 exempt from Title 37, chapter 3, relating to the practice of medicine.

19 (4) This chapter does not exempt a health maintenance organization from the applicable certificate of
20 need requirements under Title 50, chapter 5, parts 1 and 3.

21 (5) This section does not exempt a health maintenance organization from the prohibition of pecuniary
22 interest under 33-3-308 or the material transaction disclosure requirements under 33-3-701 through 33-3-704.
23 A health maintenance organization must be considered an insurer for the purposes of 33-3-308 and 33-3-701
24 through 33-3-704.

25 (6) This section does not exempt a health maintenance organization from:

- 26 (a) prohibitions against interference with certain communications as provided under Title 33, chapter 1,
27 part 8;
28 (b) the provisions of Title 33, chapter 22, parts 7 and 19;
29 (c) the requirements of 33-22-134 and 33-22-135;
30 (d) network adequacy and quality assurance requirements provided under chapter 36; or

1 (e) the requirements of Title 33, chapter 18, part 9.

2 (7) Title 33, chapter 1, parts 6, 12, and 13, 33-2-1114, 33-2-1211, 33-2-1212, Title 33, chapter 2, parts
3 13, 19, and 23, 33-3-401, 33-3-422, 33-3-431, Title 33, chapter 3, part 6, 33-15-308, Title 33, chapter 17, Title
4 33, chapter 19, 33-22-107, 33-22-129, 33-22-131, 33-22-136, 33-22-137, 33-22-138, 33-22-139, 33-22-141,
5 33-22-142, 33-22-152, 33-22-153, 33-22-156 through 33-22-159, 33-22-244, 33-22-246, 33-22-247, 33-22-514,
6 33-22-515, 33-22-521, 33-22-523, 33-22-524, 33-22-526, and Title 33, chapter 32, apply to health maintenance
7 organizations."

8

9 NEW SECTION. Section 14. Repealer. The following sections of the Montana Code Annotated are
10 repealed:

11 33-1-601. Commissioner -- attorney for service of process.

12 33-1-602. Service of process -- foreign, alien, or domestic.

13 33-1-603. Serving process -- time to plead.

14

15 NEW SECTION. Section 15. Codification instruction. [Sections 1 through 3] are intended to be
16 codified as an integral part of Title 33, chapter 1, part 6, and the provisions of Title 33, chapter 1, part 6, apply
17 to [sections 1 through 3].

18

19 NEW SECTION. Section 16. Effective date. [This act] is effective July 1, 2019.

20

- END -