

HOUSE BILL NO. 65

INTRODUCED BY M. REGIER

BY REQUEST OF THE STATE AUDITOR

1  
2  
3  
4  
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 LEGAL process, notice, or demand required or permitted by law to be served upon a  
23 company must be served. The agent must be a person who either resides or maintains a business address in  
24 this state.

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

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



1 (4) Service of process by CERTIFIED mail to a registered agent listed for an insurer is ~~valid~~ CONSTITUTES  
 2 service OF LEGAL PROCESS upon that insurer.

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 5 of the agent whose appointment has been revoked terminates 30 days after the notice is received by the  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

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

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

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

16 (9) WHEN LEGAL PROCESS IS SERVED PURSUANT TO THIS SECTION, THE INSURER MUST APPEAR, ANSWER, OR  
 17 PLEAD WITHIN 30 DAYS, EXCLUSIVE OF THE DATE OF MAILING, AFTER THE DATE OF THE CERTIFIED MAILING OR BE SUBJECT  
 18 TO THE LAWS OF THIS STATE REGARDING DEFAULT JUDGMENT.

19 (10) FOR THE PURPOSES OF THIS SECTION:

20 (A) "CERTIFIED MAIL" MEANS A METHOD OF SENDING BY COMMON CARRIER WITH TRACKING CAPABILITY; AND

21 (B) "LEGAL PROCESS" MEANS A SUMMONS AND COMPLAINT.

22

23 NEW SECTION. Section 3. Service of process without registered agent BY COMMISSIONER. (1) If a  
 24 registered agent cannot be found for a foreign or alien insurer doing business in this state, IF the agent of record  
 25 is no longer at the agent's listed address, ~~or~~ IF the insurer has failed to maintain an agent as required by [section  
 26 2], OR FOR OTHER GOOD CAUSE SHOWN FOR WHICH A PERSON'S RIGHTS MAY BE ADVERSELY AFFECTED BY INABILITY TO  
 27 SERVE AN INSURER, a person desiring to serve LEGAL process, notice, or demand may initiate service on the  
 28 commissioner by providing to the commissioner all of the following:

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

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

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

3 (2) If the requirements of subsection (1) have been met, the commissioner shall PROMPTLY serve THE  
 4 LEGAL process, notice, or demand by ~~regular~~ CERTIFIED mail to the foreign or alien insurer at its principal office  
 5 as shown in the commissioner's records. Service BY THE COMMISSIONER upon the insurer ~~is deemed complete after~~  
 6 ~~the commissioner has mailed the process, notice, or demand~~ BY CERTIFIED MAIL CONSTITUTES SERVICE OF LEGAL  
 7 PROCESS ON THAT INSURER. The commissioner shall maintain a record of each process, notice, or demand the  
 8 commissioner ~~completes~~ SERVES under this section.

9 (3) WHEN LEGAL PROCESS IS SERVED PURSUANT TO THIS SECTION, THE INSURER MUST APPEAR, ANSWER, OR  
 10 PLEAD WITHIN 30 DAYS, EXCLUSIVE OF THE DATE OF MAILING, AFTER THE DATE OF THE CERTIFIED MAILING OR BE SUBJECT  
 11 TO THE LAWS OF THIS STATE REGARDING DEFAULT JUDGMENT.

12 (4) FOR PURPOSES OF THIS SECTION:

13 (A) "CERTIFIED MAIL" MEANS A METHOD OF SENDING BY COMMON CARRIER WITH TRACKING CAPABILITY; AND

14 (B) "LEGAL PROCESS" MEANS A SUMMONS AND COMPLAINT.

15

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

17 **"33-1-613. Service of process -- criteria mandating designation of commissioner.** (1) Service of  
 18 process upon any insurer pursuant to 33-1-612 must be made by delivering to and leaving with the commissioner  
 19 or some person in apparent charge of the commissioner's office two copies of the process and the payment to  
 20 the commissioner of ~~fees that may be prescribed by law~~ the same fee as provided in [section 3]. The  
 21 commissioner shall mail by certified mail one of the copies of the process to the defendant at its principal place  
 22 of business last known to the commissioner and shall keep a record of any process served upon the  
 23 commissioner. The service of process is sufficient if notice of the service and a copy of the process are sent  
 24 within 10 days by certified mail by the plaintiff's attorney to the defendant at its last-known principal place of  
 25 business and the defendant's receipt or receipt issued by the post office with which the letter is registered,  
 26 showing the name of the sender of the letter and the name and address of the person to whom the letter is  
 27 addressed, and the affidavit of the plaintiff's attorney showing a compliance with this section are filed with the  
 28 clerk of the court in which the action is pending on or before the date the defendant is required to appear or within  
 29 further time that the court may allow.

30 (2) Service of process in any action, suit, or proceeding must in addition to the manner provided in

1 subsection (1) be valid if:

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

3 (i) soliciting insurance;

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

5 or

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

7 (b) a copy of the process is sent within 10 days by certified mail by the plaintiff's attorney to the defendant

8 at the last-known principal place of business of the defendant; and

9 (c) the defendant's receipt or the 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 (3) A plaintiff or complainant may not be entitled to a judgment by default under this section until the  
15 expiration of 30 days from the date of the filing of the affidavit of compliance.

16 (4) This section does not limit or abridge the right to serve any process, notice, or demand upon any  
17 insurer in any other manner now or later permitted by law."

18

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

20 **"33-2-115. Application for certificate of authority.** To apply for an original certificate of authority, an  
21 insurer shall file with the commissioner its application accompanied by the applicable fees as specified in  
22 33-2-708, showing its name, location of its home office or principal office in the United States, if an alien insurer,  
23 kinds of insurance to be transacted, date of organization or incorporation, form of organization, state or country  
24 of domicile, and any additional information that the commissioner may reasonably require. The application must  
25 be accompanied by the following documents, as applicable:

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

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

30 (3) if a reciprocal insurer, copies of the power of attorney of its attorney-in-fact and of its subscribers'

1 agreement, if any, certified by its attorney-in-fact;

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

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

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

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

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

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

15 (10) if a domestic insurer, specimen copies of policies proposed to be offered in this state, together with  
16 premiums or premium rates applicable, or a declaration that the rates as applicable will be those promulgated  
17 by designated rating organizations authorized to file the rates in this state on behalf of the insurer."  
18

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

20 **"33-2-315. ~~Commissioner appointed process agent -- service~~Service of process.** (1) Every surplus  
21 lines insurer before transacting surplus lines insurance under this part shall designate a registered agent with the  
22 commissioner as provided in [section 2]~~in writing appoint the commissioner as its true and lawful attorney upon~~  
23 ~~whom legal process in any action or proceeding against it in this state shall be served and in such writing shall~~  
24 ~~agree that any such process served upon such attorney shall be of the same legal force and validity as if served~~  
25 ~~in this state upon such insurer and that such authority shall continue in force so long as any liability remains~~  
26 ~~outstanding against it in this state. At the time of filing such appointment, the insurer shall also file designation~~  
27 ~~of the name and address of the person to whom process against it served upon the commissioner is to be~~  
28 ~~forwarded. The insurer may change such designation by a new filing.~~

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

1

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

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

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

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

17           (a) files with the commissioner evidence of its submission to this state's jurisdiction;

18           (b) submits to this state's authority to examine its books and records;

19           (c) is licensed to transact insurance or reinsurance in at least one state or, in the case of a United States  
20 branch of an alien assuming insurer, is entered through and licensed to transact insurance or reinsurance in at  
21 least one state;

22           (d) files annually with the commissioner a copy of its annual statement filed with the insurance  
23 department of its state of domicile and a copy of its most recent audited financial statement; and

24           (e) demonstrates to the satisfaction of the commissioner that the accredited reinsurer has adequate  
25 financial capacity to meet its reinsurance obligations and is otherwise qualified to assume reinsurance from  
26 domestic insurers. An assuming insurer meets this requirement as of the time of its application if:

27           (i) the assuming accredited reinsurer maintains a surplus as regards policyholders in an amount not less  
28 than \$20 million; and

29           (ii) the commissioner approves its accreditation within 90 days after the date that the accredited reinsurer  
30 submits its application.

1 (4) (a) Subject to subsection (4)(b), credit must be allowed when:

2 (i) the reinsurance is ceded to an assuming insurer that is domiciled and licensed in or, in the case of  
3 a United States branch of an alien assuming insurer, is entered through a state that employs standards regarding  
4 credit for reinsurance substantially similar to those applicable under this statute; and

5 (ii) the assuming insurer or the United States branch of an alien assuming insurer:

6 (A) maintains a surplus with regard to policyholders in an amount not less than \$20 million; and

7 (B) submits to the authority of this state to examine its books and records.

8 (b) The requirement of subsection (4)(a)(i) does not apply to reinsurance ceded and assumed pursuant  
9 to pooling arrangements among insurers in the same holding company system.

10 (5) (a) Credit must be allowed when the reinsurance is ceded to an assuming insurer that maintains a  
11 trust fund in a qualified United States financial institution for the payment of the valid claims of its United States  
12 policyholders and ceding insurers and their assigns and successors in interest. The assuming insurer shall report  
13 annually to the commissioner information substantially the same as that required to be reported on the NAIC  
14 annual statement form by licensed insurers to enable the commissioner to determine the sufficiency of the trust  
15 fund. The assuming insurer shall submit to examination of its books and records by the commissioner and shall  
16 bear the expense of examination.

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

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

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

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

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

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

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

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

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

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

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

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

26 (c) The trust must be established in a form approved by the commissioner. The trust instrument must  
27 provide that contested claims are valid and enforceable upon the final order of any court of competent jurisdiction  
28 in the United States. The trust must vest legal title to its assets in the trustees of the trust for its United States  
29 policyholders and ceding insurers and their assigns and successors in interest. The trust and the assuming  
30 insurer are subject to examination as determined by the commissioner. The trust described in this subsection



1 (5)(c) must remain in effect for as long as the assuming insurer has outstanding obligations due under the  
2 reinsurance agreements subject to the trust.

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

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

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

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

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

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

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

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

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

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

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

30 (A) satisfy its minimum capital and surplus requirements through the capital and surplus equivalents as

1 a net of liabilities of the association and its members. This provision must include use of a joint central fund that  
2 may be applied to any unsatisfied obligation of the association or any of its members in an amount that provides  
3 adequate protection as determined by the commissioner.

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

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

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

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

17 (C) whether an NAIC-accredited jurisdiction has certified the reinsurer; and

18 (D) any additional factors the commissioner considers relevant.

19 (v) If the commissioner approves a jurisdiction as qualified that does not appear on the list of qualified  
20 jurisdictions published by the NAIC, the commissioner shall provide thoroughly documented justification in  
21 accordance with the criteria listed under subsection (5)(e)(iv).

22 (vi) Qualified jurisdictions under subsection (5)(e)(iv) shall agree to share information and cooperate with  
23 the commissioner with respect to all certified reinsurers domiciled within that jurisdiction.

24 (vii) The commissioner may not approve a jurisdiction not in the United States if the commissioner  
25 determines that the jurisdiction does not adequately and promptly enforce final United States judgments and  
26 arbitration awards.

27 (viii) If a certified reinsurer's domiciliary jurisdiction ceases to be a qualified jurisdiction, the commissioner  
28 may either suspend the reinsurer's certification indefinitely or revoke the certification entirely.

29 (ix) The commissioner shall assign a rating to each certified reinsurer. In assigning a rating, the  
30 commissioner shall consider the financial strength ratings assigned by agencies approved by the commissioner.

1 The commissioner shall publish a list of all certified reinsurers and their ratings. The commissioner may defer to  
2 a rating assigned by a jurisdiction accredited by the NAIC.

3 (x) A certified reinsurer shall secure obligations assumed from United States ceding insurers under this  
4 subsection (5)(e)(x) at a level consistent with the certified reinsurer's rating. A domestic ceding insurer qualifies  
5 for full financial statement credit for reinsurance ceded to a certified reinsurer if the certified reinsurer:

6 (A) maintains security in a form acceptable to the commissioner and in accord with the provisions of this  
7 section; or

8 (B) forms a multibeneficiary trust in accord with subsections (5)(a) through (5)(d), except that minimum  
9 trustee surplus requirements as provided in subsection (5)(b) do not apply with respect to a multibeneficiary trust  
10 account maintained by a certified reinsurer for the purpose of securing obligations incurred under this subsection  
11 (5)(e)(x). A multibeneficiary trust under this subsection (5)(e)(x)(B) must be maintained with a minimum trustee  
12 surplus of \$10 million.

13 (xi) A certified reinsurer operating under subsection (5)(e)(x)(B) shall maintain separate trust accounts  
14 for its obligations incurred under reinsurance agreements issued or renewed as a certified reinsurer with reduced  
15 security as permitted by this subsection (5)(e) or comparable laws of other United States jurisdictions.

16 (xii) If obligations incurred by a certified reinsurer under this subsection (5)(e) lack sufficient security, the  
17 commissioner shall reduce the allowable credit by an amount proportionate to the deficiency. The commissioner  
18 may impose further reductions in allowable credit upon finding that there is a material risk that the certified  
19 reinsurer's obligations will not be paid in full when due.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30           (d) The commissioner may determine that the assets of the trust fund or any part of the trust fund assets

1 are not necessary to satisfy the claims of the United States ceding insurers of the grantor of the trust. If the  
2 commissioner makes this determination, the commissioner shall return the assets or part of the assets to the  
3 trustee for distribution in accordance with the trust agreement.

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

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

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

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

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

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

14 (b) While a reinsurer's accreditation or certification is suspended, no reinsurance contract issued or  
15 renewed after the effective date of the suspension qualifies for credit under this section except to the extent that  
16 the reinsurer's obligations under the contract are secured in accordance with this section. If a reinsurer's  
17 accreditation or certification is revoked, no credit for reinsurance may be granted after the effective date of the  
18 revocation except to the extent that the reinsurer's obligations under the contract are secured in accordance with  
19 33-2-1217 and subsection (5)(e)(x) of this section.

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

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

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

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

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

27 (ii) to diversify its reinsurance program. A domestic ceding insurer shall notify the commissioner within  
28 30 days after ceding to any single assuming insurer or group of affiliated assuming insurers more than 20% of  
29 the ceding insurer's gross written premium in the prior calendar year or after the domestic ceding insurer has  
30 determined that the reinsurance ceded to any single assuming insurer or group of affiliated assuming insurers

1 is likely to exceed the 20% limit.

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

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

7

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

9 **"33-2-1701. Licensure of reinsurance intermediaries.** (1) A person, firm, association, or corporation  
10 may not act as a reinsurance intermediary-broker in this state if the reinsurance intermediary-broker maintains  
11 an office directly, as a member or employee of a firm or association, or as an officer, director, or employee of a  
12 corporation:

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

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

17 (2) A person, firm, association, or corporation may not act as a reinsurance intermediary-manager:

18 (a) for a reinsurer domiciled in this state, unless the reinsurance intermediary-manager is a licensed  
19 producer in this state;

20 (b) in this state, if the reinsurance intermediary-manager maintains an office either directly or as a  
21 member or employee of a firm or association or as an officer, director, or employee of a corporation in this state,  
22 unless the reinsurance intermediary-manager is a licensed producer in this state; or

23 (c) in another state for a nondomestic insurer, unless the reinsurance intermediary-manager is a licensed  
24 producer in this state or another state that has a law substantially similar to this law or unless the person is  
25 licensed in this state as a nonresident insurance intermediary.

26 (3) Subject to subsection (2), the commissioner may require a reinsurance intermediary-manager to:

27 (a) file a bond in an amount from an insurer acceptable to the commissioner for the protection of the  
28 reinsurer; and

29 (b) maintain a policy on errors and omissions in an amount acceptable to the commissioner.

30 (4) (a) The commissioner may issue a reinsurance intermediary license to any person, firm, association,

1 or corporation that has complied with the requirements of this part. A license issued to a firm or association  
 2 authorizes all the members of the firm or association and any designated employees to act as reinsurance  
 3 intermediaries under the license. All authorized persons must be named in the application and in any  
 4 supplements to the application. A license issued to a corporation must authorize all of the officers and any  
 5 designated employees and directors to act as reinsurance intermediaries on behalf of the corporation. All  
 6 authorized persons must be named in the application and in any supplements to the application.

7 (b) If the applicant for a reinsurance intermediary license is a nonresident, the applicant, as a condition  
 8 precedent to receiving or holding a license, shall ~~designate the commissioner as the~~ appoint an agent for service  
 9 of process in the manner provided for by ~~this title for designation of service of process upon unauthorized insurers~~  
 10 [section 2]. ~~The applicant shall also furnish the commissioner with the name and address of a resident of this~~  
 11 ~~state upon whom notices or orders of the commissioner or process affecting the nonresident reinsurance~~  
 12 ~~intermediary may be served.~~ The licensee shall promptly notify the commissioner in writing of each change in its  
 13 ~~designated~~ appointed agent for service of process, and the change may not become effective until acknowledged  
 14 by the commissioner.

15 (5) (a) The commissioner may refuse to issue a reinsurance intermediary license if, in the  
 16 commissioner's judgment:

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

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

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

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

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

26

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

28 **"33-6-101. Scope of chapter -- provisions applicable.** (1) This chapter applies only to benevolent  
 29 associations.

30 (2) The provisions of this title do not apply to any benevolent association unless contained or referred

1 to in this chapter.

2 (3) In addition to the provisions contained in this chapter, other chapters and provisions of this title shall  
3 apply to benevolent associations, to the extent applicable, as follows: parts 1, 2, 3, 4, 5, 6, and 7 of chapter 1;  
4 ~~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;  
5 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;  
6 33-22-304; and 33-22-506."

7

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

9 **"33-19-403. Service of process -- insurance-support organizations.** For the purpose of this chapter,  
10 an insurance-support organization transacting business outside this state that has an effect on a person residing  
11 in this state is considered to have appointed the commissioner to accept service of process on its behalf. The  
12 party seeking service and the commissioner shall mail a copy of the notice by registered mail to the  
13 insurance-support organization at its last-known principal place of business. The return postcard receipt for such  
14 mailing is sufficient proof that the same was properly mailed by the commissioner follow the procedure in [section  
15 3] to effectuate service."

16

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

18 **"33-28-102. Certificates of authority -- lines of business -- definition.** (1) A captive insurance  
19 company, when permitted by its organizational document, may apply to the commissioner for a certificate of  
20 authority to provide property insurance, casualty insurance, life insurance, disability income insurance, surety  
21 insurance, marine insurance, and health insurance coverage or a group health plan as defined in 33-22-140,  
22 except that:

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

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

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

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



- 1 (e) a captive insurance company or a branch captive insurance company may not:
- 2 (i) provide personal lines of insurance, including but not limited to motor vehicle or homeowner's  
3 insurance coverage or any component of those coverages;
- 4 (ii) accept or cede reinsurance except as provided in 33-28-203;
- 5 (iii) provide health insurance coverage or a group health plan unless the captive insurance company or  
6 branch captive insurance company is only providing health insurance coverage or a group health plan for the  
7 parent company and its affiliated companies; or
- 8 (iv) write workers' compensation insurance on a direct basis; and
- 9 (f) a protected cell captive insurance company may not insure any risks other than those of its  
10 participants.
- 11 (2) A captive insurance company may not write any insurance business unless:
- 12 (a) it first obtains from the commissioner a certificate of authority under this section;
- 13 (b) its board of directors, board of managing members, or a reciprocal insurer's subscribers' advisory  
14 committee holds at least one meeting each year in this state;
- 15 (c) it maintains its principal place of business in this state; and
- 16 (d) it ~~appoints~~ designates a registered agent to accept service of process, files the name and contact  
17 information and any subsequent changes regarding the registered agent with the commissioner, and agrees that  
18 whenever the registered agent cannot be found with reasonable diligence, the commissioner's office may act as  
19 an agent of the captive insurance company with respect to any action or proceeding and may be served in  
20 accordance with ~~33-1-603~~ [section 2] and [section 3].
- 21 (3) (a) Before receiving a certificate of authority, a captive insurance company shall:
- 22 (i) with respect to a captive insurance company formed as a business entity:
- 23 (A) file with the commissioner a certified copy of its organizational documents, a statement under oath  
24 of an officer of the business entity showing its financial condition, and any other statements or documents  
25 required by the commissioner; and
- 26 (B) submit to the commissioner for approval a description of the coverages, deductibles, coverage limits,  
27 and rates, together with any additional information that the commissioner may reasonably require;
- 28 (ii) with respect to a captive insurance company formed as a reciprocal insurer:
- 29 (A) file with the commissioner a certified copy of the power of attorney of its attorney-in-fact, a certified  
30 copy of its subscribers' agreement, a statement under oath of its attorney-in-fact showing its financial condition,

1 and any other statements or documents required by the commissioner; and

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (e) Information submitted pursuant to this subsection (3) must remain confidential and may not be made

1 public by the commissioner or an employee or agent of the commissioner without the written consent of the  
2 company, except that:

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

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

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

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

23 (5) If the commissioner is satisfied that the documents and statements that the applicant captive  
24 insurance company has filed comply with the provisions of this chapter and applicable provisions of Title 33, the  
25 commissioner may grant a certificate authorizing the company to do insurance business in this state. The  
26 certificate is effective until March 1 of each year and may be renewed upon proper compliance with this chapter."  
27

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

29 **"33-28-207. Applicable laws.** (1) The following apply to captive insurance companies:

30 (a) the definitions of commissioner and department provided in 33-1-202, property insurance provided

1 in 33-1-210, casualty insurance provided in 33-1-206, life insurance provided in 33-1-208, health insurance  
2 coverage and group health plans provided in 33-22-140, and disability income insurance provided in 33-1-235;

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

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

6 (d) the provisions of 33-1-311, ~~33-1-603~~, [section 1], [section 2], [section 3], 33-3-431, 33-18-201,  
7 33-18-203, 33-18-205, and 33-18-242;

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

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

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

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

17 (4) The following provisions apply to captive risk retention groups:

18 (a) those relating to actuarial opinions in Title 33, chapter 1, part 14;

19 (b) those relating to risk-based capital in Title 33, chapter 2, part 19; and

20 (c) those relating to insurance holding company systems in Title 33, chapter 2, part 11.

21 (5) Except as expressly provided in this chapter, the provisions of Title 33 do not apply to captive  
22 insurance companies."

23

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

25 **"33-31-111. Statutory construction and relationship to other laws.** (1) Except as otherwise provided  
26 in this chapter, the insurance or health service corporation laws do not apply to a health maintenance organization  
27 authorized to transact business under this chapter. This provision does not apply to an insurer or health service  
28 corporation licensed and regulated pursuant to the insurance or health service corporation laws of this state  
29 except with respect to its health maintenance organization activities authorized and regulated pursuant to this  
30 chapter.

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

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

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

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

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

12 (a) prohibitions against interference with certain communications as provided under Title 33, chapter 1,  
13 part 8;

14 (b) the provisions of Title 33, chapter 22, parts 7 and 19;

15 (c) the requirements of 33-22-134 and 33-22-135;

16 (d) network adequacy and quality assurance requirements provided under chapter 36; or

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

18 (7) Title 33, chapter 1, parts 6, 12, and 13, 33-2-1114, 33-2-1211, 33-2-1212, Title 33, chapter 2, parts  
19 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  
20 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,  
21 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,  
22 33-22-515, 33-22-521, 33-22-523, 33-22-524, 33-22-526, and Title 33, chapter 32, apply to health maintenance  
23 organizations."

24  
25 **NEW SECTION. Section 14. Repealer.** The following sections of the Montana Code Annotated are  
26 repealed:

27 33-1-601. Commissioner -- attorney for service of process.

28 33-1-602. Service of process -- foreign, alien, or domestic.

29 33-1-603. Serving process -- time to plead.

30

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

4

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

6

- END -