

HOUSE BILL NO. 119

INTRODUCED BY T. BERRY

BY REQUEST OF THE STATE AUDITOR

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5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING INSURANCE LAWS; IMPLEMENTING  
6 ACCREDITATION STANDARDS AND MODEL ACTS DEVELOPED BY THE NATIONAL ASSOCIATION OF  
7 INSURANCE COMMISSIONERS, INCLUDING STANDARDS FOR RISK MANAGEMENT AND RETENTION,  
8 VALUATION, ENTERPRISE RISK STANDARDS FOR HOLDING COMPANY SYSTEMS, AND CERTAIN  
9 NONFORFEITURE PROVISIONS; CREATING GUIDELINES AND RELATED REQUIREMENTS FOR AN  
10 INSURER'S SELF-ASSESSMENT OF RISK AND SOLVENCY; ADOPTING PRINCIPLE-BASED VALUATION;  
11 ADOPTING A VALUATION MANUAL FOR RESERVES; APPLYING ACTUARIAL STANDARDS TO RESERVE  
12 REPORTING; APPLYING THE VALUATION MANUAL TO ACCIDENT AND HEALTH PLANS; PROVIDING FOR  
13 ENTERPRISE RISK REPORTING; GRANTING THE COMMISSIONER OF INSURANCE APPROVAL  
14 AUTHORITY OVER DIVESTITURES; ALLOWING FOR DISCLAIMERS OF AFFILIATION; EXTENDING  
15 CONFIDENTIALITY FOR VARIOUS REPORTS FILED WITH THE COMMISSIONER; EXPANDING PENALTIES  
16 FOR WITHHOLDING OF CERTAIN INFORMATION; CLARIFYING CREDIT FOR CEDING INSURERS OR  
17 REINSURERS; REVISING TERMS FOR RISK RETENTION GROUPS, INCLUDING CLARIFICATION OF  
18 INDEPENDENT DIRECTORS AND MATERIAL RELATIONSHIPS; EXPANDING NONFORFEITURE  
19 VALUATION OPTIONS; EXTENDING RULEMAKING AUTHORITY; AMENDING SECTIONS 33-2-521, 33-2-523,  
20 33-2-525, 33-2-526, 33-2-527, 33-2-537, 33-2-1101, 33-2-1104, 33-2-1105, 33-2-1106, 33-2-1111, 33-2-1112,  
21 33-2-1113, 33-2-1115, 33-2-1116, 33-2-1120, 33-2-1216, 33-2-1217, 33-2-1501, 33-11-103, 33-20-203,  
22 33-20-208, AND 33-31-204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE  
23 APPLICABILITY DATE."

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

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27 NEW SECTION. **Section 1. Short title.** [Sections 1 through 9] may be cited as the "Own Risk and  
28 Solvency Assessment Act".

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30 NEW SECTION. **Section 2. Purpose.** The purpose of [sections 1 through 9] is to provide:

1 (1) requirements for maintaining a risk management framework and completing an own risk and solvency  
2 assessment; and

3 (2) guidance and instructions for filing an ORSA summary report with the commissioner.  
4

5 **NEW SECTION. Section 3. Definitions.** For the purposes of [sections 1 through 9], the following  
6 definitions apply:

7 (1) "Insurance group" means those insurers and affiliates included within an insurance holding company  
8 system as defined in 33-2-1101.

9 (2) "ORSA guidance manual" means the current version of the own risk and solvency assessment  
10 guidance manual developed and adopted by NAIC as of [the effective date of this act] or as subsequently adopted  
11 by rule by the commissioner.

12 (3) "ORSA summary report" means a confidential, high-level summary of an insurer's or insurance  
13 group's ORSA.

14 (4) "Own risk and solvency assessment" or "ORSA" means a confidential, internal assessment  
15 conducted by an insurer or insurance group of the material and relevant risks associated with the insurer or the  
16 insurance group's current business plan and of the sufficiency of the insurer's or insurance group's capital  
17 resources to support those risks.

18 (5) "Risk management framework" means a study to assist an insurer or insurance group to identify,  
19 assess, monitor, manage, and report on material and relevant risk of the insurer or the insurance group.  
20

21 **NEW SECTION. Section 4. Risk management framework required.** All Montana insurers and  
22 insurance groups shall maintain a risk management framework. This requirement is satisfied if the insurance  
23 group of which the insurer is a member maintains a risk management framework applicable to the operations of  
24 the insurer.  
25

26 **NEW SECTION. Section 5. Own risk and solvency assessment required.** Subject to the exemptions  
27 in [section 7], an insurer or an insurance group of which the insurer is a member shall conduct an own risk and  
28 solvency assessment consistent with a process comparable to the ORSA guidance manual. The own risk and  
29 solvency assessment must be conducted no less than annually and at any time when there are significant  
30 changes to the risk profile of the insurer or the insurance group of which the insurer is a member.

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2           **NEW SECTION. Section 6. ORSA summary report.** (1) No more than once a year, the commissioner  
3 may request and an insurer or its insurance group shall provide to the commissioner, as provided in subsection  
4 (2), an ORSA summary report or any combination of reports that together contain the information described in  
5 the ORSA guidance manual as applicable to the insurer and the insurance group of which the insurer is a  
6 member.

7           (2) (a) If the insurer is a member of an insurance group, the insurer shall submit any report required  
8 under this section to the commissioner when the commissioner is the lead state regulator for that insurance  
9 group.

10           (b) If the insurer is not a member of an insurance group, the insurer shall submit any report required  
11 under this section to the commissioner.

12           (c) An insurer that is a member of an insurance group may voluntarily submit the report to a requesting  
13 insurance regulator who is not the lead state regulator for the insurer's insurance group.

14           (3) (a) The report must include the signature of the chief risk officer of the insurer or insurance group or  
15 of another executive charged with overseeing the enterprise risk management process for the insurer or the  
16 insurance group.

17           (b) The signature of the chief risk officer or other executive charged with overseeing the enterprise risk  
18 management is an attestation that to the best of the officer's or executive's knowledge the insurer or insurance  
19 group applies the enterprise risk management process described in the ORSA summary report and that a copy  
20 of the report has been provided to the board of directors of the insurer or the insurance group or to the  
21 appropriate committee of the board of directors.

22  
23           **NEW SECTION. Section 7. ORSA exemptions -- conditions -- waiver -- override.** (1) Except as  
24 provided in subsection (5), an insurer is exempt from completing an ORSA summary report if:

25           (a) (i) the insurer has an annual direct written and unaffiliated assumed premium of less than \$500 million.  
26 This total includes international direct and assumed premiums. The total excludes premiums reinsured through  
27 the federal crop insurance corporation and the federal flood program.

28           (ii) the insurer's insurance group has annual direct written and unaffiliated assumed premiums of less  
29 than \$1 billion. This total includes international direct and assumed premiums. The total excludes premiums  
30 reinsured through the federal crop insurance corporation and the federal flood program.

1 (b) the insurer provides the most recent and similar report provided by the insurer or another group  
2 member of an insurance group of which the insurer is a member to the insurance regulator of another state or  
3 to an insurance supervisor or insurance regulator of a foreign jurisdiction.

4 (2) If an insurer qualifies for exemption pursuant to subsection (1)(a)(i) but the insurance group of which  
5 the insurer is a member does not qualify for exemption pursuant to subsection (1)(a)(ii), the ORSA summary  
6 report must include every insurer within the insurance group. This requirement may be satisfied by the submission  
7 of more than one ORSA summary report for any combination of insurers as long as each combination of reports  
8 includes every insurer within the insurance group.

9 (3) If an insurer does not qualify for exemption pursuant to (1)(a)(i) but the insurance group of which the  
10 insurer is a member qualifies for exemption pursuant to subsection (1)(a)(ii), the only required ORSA summary  
11 report is the report applicable to that insurer.

12 (4) (a) An insurer that does not qualify for exemption under this section may apply to the commissioner  
13 for a waiver from the requirements of [sections 1 through 9] based on unique circumstances.

14 (b) In deciding whether to grant an insurer's request for a waiver, the commissioner may consider the  
15 type and volume of business written, ownership, organizational structure, and any other factor the commissioner  
16 considers relevant to the insurer or to the insurance group of which the insurer is a member.

17 (c) If the insurer is part of an insurance group with insurers domiciled in more than one state, the  
18 commissioner may coordinate with the lead state regulator and with the other domiciliary insurance regulators  
19 in considering whether to grant the insurer's request for a waiver.

20 (5) (a) The commissioner may override the exemptions provided under this section:

21 (i) based on unique circumstances, which may include the type and volume of business written,  
22 ownership, organizational structure, federal agency requests, or international supervisor requests; or

23 (ii) if the insurer has risk-based capital that meets a company action level event as provided in 33-2-1904.

24 (b) If the commissioner determines that an override of the exemptions as provided in subsection (5)(a)  
25 is necessary, the commissioner may require an insurer to maintain a risk management framework, conduct an  
26 own risk and solvency assessment, and file an ORSA summary report.

27  
28 **NEW SECTION. Section 8. Confidentiality.** (1) Information provided or developed under [sections  
29 1 through 9] for an own risk and solvency assessment or ORSA summary report and in the possession of or  
30 control of the commissioner or any other person is confidential and must be treated as containing trade secrets

1 as defined in 30-14-402. As a trade secret the information is privileged, not admissible as evidence in any civil  
2 action, and not subject to subpoena, discovery, or the Freedom of Information Act.

3 (2) The commissioner may use information in an ORSA summary report in the furtherance of any  
4 regulatory or legal action brought as a part of the commissioner's official duties.

5 (3) The commissioner and any person who receives ORSA-related information while operating under  
6 the authority of the commissioner or with whom information is shared pursuant to an own risk and solvency  
7 assessment may not testify in any private civil action concerning the ORSA-developed information.

8 (4) To assist in the commissioner's regulatory duties, the commissioner:

9 (a) may share ORSA-related information with other state, federal, and international financial regulatory  
10 agencies, including with members of any supervisory college, the NAIC, or third-party consultants designated by  
11 the commissioner. A person with whom the ORSA-related information is shared shall agree in writing to maintain  
12 the confidentiality and privileged status of the ORSA-related information and shall verify that the recipient has  
13 legal authority to maintain confidentiality.

14 (b) may receive information from regulatory officials of other foreign or domestic jurisdictions, supervisory  
15 college members, and the NAIC. Received information is confidential as provided in this section.

16 (c) shall enter into a written agreement with the NAIC or a third-party consultant governing sharing and  
17 use of the information provided pursuant to an ORSA, consistent with this subsection (4).

18 (5) The written agreement required under subsection (4)(c) must:

19 (a) specify procedures and protocols regarding the confidentiality of the information, including procedures  
20 and protocols for sharing by the NAIC with other state regulators from states in which the insurance group has  
21 domiciled insurers;

22 (b) provide that the recipient agrees in writing to maintain the confidentiality and privileged status of the  
23 information and that the recipient has verified the legal authority to maintain confidentiality;

24 (c) specify that ownership of shared information remains with the commissioner. Use of the information  
25 by the NAIC or a third-party consultant is subject to the direction of the commissioner.

26 (d) prohibit the recipient from storing the shared information in a permanent database after any  
27 underlying analysis is completed;

28 (e) require notice to be given to an insurer whose information in the possession of the recipient is subject  
29 to a request or subpoena to the recipient for disclosure or production;

30 (f) require the recipient to consent to intervention by an insurer in any judicial or administrative action

1 in which the recipient may be required to disclose confidential information about the insurer that is received under  
2 an ORSA; and

3 (g) require the insurer's consent when entering into an agreement with a third-party consultant.

4 (6) The sharing of information pursuant to [sections 1 through 9] does not constitute a delegation of  
5 regulatory authority or rulemaking, and the commissioner remains solely responsible for the administration,  
6 execution, and enforcement of the provisions of [sections 1 through 9].

7 (7) Disclosure of information under this section to or from the commissioner does not constitute a waiver  
8 of any applicable privilege or claim of confidentiality related to the information obtained under [sections 1 through  
9 9].

10 (8) For the purposes of this section, "information" means documents, materials, or other ORSA-related  
11 information, including the ORSA summary report, that is in the possession of or control of the commissioner or  
12 any other person under [sections 1 through 9].

13  
14 **NEW SECTION. Section 9. Sanctions.** (1) Any insurer failing to timely file the ORSA summary report  
15 shall be fined no more than \$500 for each day's delay, up to a maximum penalty of \$25,000.

16 (2) The commissioner shall collect the fine and deposit the money in the state general fund.  
17

18 **NEW SECTION. Section 10. Short title.** [Sections 10 through 16], 33-2-521 through 33-2-529,  
19 33-2-531, and 33-2-537 may be cited as the "Standard Valuation Act".  
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21 **NEW SECTION. Section 11. Definitions.** As used in [this part], the following definitions apply unless  
22 the context clearly indicates otherwise:

23 (1) "Accident and health insurance" means contracts that incorporate morbidity risk and provide  
24 protection against economic loss resulting from accident, sickness, or medical conditions.

25 (2) "Appointed actuary" means a qualified actuary who is appointed in accordance with the valuation  
26 manual to prepare an actuarial opinion required by [this part].

27 (3) "Deposit-type contract" means a contract that does not incorporate mortality or morbidity risks.

28 (4) "Insurer" means an entity that:

29 (a) has written, issued, or reinsured life insurance contracts, accident and health insurance contracts,  
30 or deposit-type contracts in Montana and has at least one of the named contracts in force or on claim; or

1 (b) has written, issued, or reinsured life insurance contracts, accident and health insurance contracts,  
2 or deposit-type contracts in any state and is required to hold a certificate of authority to write life insurance,  
3 accident and health insurance, or deposit-type contracts in Montana.

4 (5) "Life insurance" means contracts that incorporate mortality risk, including annuity and pure  
5 endowment contracts.

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

7 (7) (a) "Policyholder behavior" means any action taken by a policyholder, a contract holder, or any other  
8 person with the right to elect options, such as the action that a certificate holder may take under a policy or a  
9 contract subject to [this part]. The actions include but are not limited to allowing a policy or contract to lapse,  
10 making a premium payment or loan, or making benefit elections prescribed by the policy or contract. Other  
11 actions may be identified by rule.

12 (b) The term does not include events of mortality or morbidity that result in benefits prescribed in their  
13 essential aspects by the terms of the policy or contract.

14 (8) "Principle-based valuation" means a reserve valuation that uses one or more methods or one or more  
15 assumptions determined by the insurer. A principle-based valuation must comply with the provisions of [section  
16 13].

17 (9) "Qualified actuary" means an individual who is qualified to sign the applicable statement of actuarial  
18 opinion in accordance with the American academy of actuaries qualification standards and meets the  
19 requirements specified in the valuation manual.

20 (10) "Tail risk" means a risk that occurs either when the frequency of low-probability events is higher than  
21 expected under a normal probability distribution or when there are observed events of very significant size or  
22 magnitude.

23 (11) "Valuation manual" means the valuation manual adopted by the NAIC in accordance with its model  
24 law regarding standard valuation and adopted by the commissioner by rule.

25

26 **NEW SECTION. Section 12. Valuation for policies.** (1) For policies issued on or after the operative  
27 date of the valuation manual, the standard prescribed in the valuation manual is the minimum standard of  
28 valuation required under 33-2-521, except as provided in subsection (6) or (8) of this section.

29 (2) The operative date of the valuation manual is January 1 of the first calendar year following the first  
30 July 1 as of which all of the following have occurred:

- 1 (a) the valuation manual has been adopted by the NAIC by an affirmative vote of at least 42 members  
2 or three-fourths of the members voting, whichever is greater;
- 3 (b) the standard valuation law as amended by the NAIC in 2009, or legislation including substantially  
4 similar terms and provisions, has been enacted by states representing greater than 75% of the direct premiums  
5 written as reported in the following annual statements submitted for 2008: life, accident and health, health, and  
6 fraternal annual statements;
- 7 (c) the standard valuation law as amended by the NAIC in 2009, or legislation including substantially  
8 similar terms and provisions, has been enacted by at least 42 of the following 55 jurisdictions: the 50 states of  
9 the United States, American Samoa, the American Virgin Islands, the District of Columbia, Guam, and Puerto  
10 Rico; and
- 11 (d) the commissioner has adopted by rule the valuation manual after the operative date of the valuation  
12 manual.
- 13 (3) Unless a change in the valuation manual specifies a later effective date, changes to the valuation  
14 manual are effective on January 1 following the date when all of the following have occurred:
- 15 (a) the change in the valuation manual has been adopted by an affirmative vote representing:
- 16 (i) at least three-fourths of the members of the NAIC voting but not less than a majority of the total  
17 membership; and
- 18 (ii) members of the NAIC representing jurisdictions totaling more than 75% of the direct premiums written  
19 as reported in the following annual statements most recently available prior to the vote in subsection (3)(a)(i): life,  
20 accident and health, health, and fraternal annual statements; and
- 21 (b) the change to the valuation manual is adopted by the commissioner by rule.
- 22 (4) The valuation manual adopted by the commissioner must specify all of the following:
- 23 (a) minimum valuation standards for and definitions of the policies or contracts subject to 33-2-521(2).  
24 The minimum valuation standards include:
- 25 (i) the commissioner's reserve valuation method for life insurance contracts, other than annuity contracts,  
26 subject to [section 13];
- 27 (ii) the commissioner's annuity reserve valuation method for annuity contracts subject to 33-2-521(2); and  
28 (iii) minimum reserves for all other policies or contracts subject to [section 13(2)].
- 29 (b) a description of which policies or contracts or types of policies or contracts that are subject to the  
30 requirements of a principle-based valuation in [section 13(1)] and the minimum valuation standards consistent



1 with those requirements;

2 (c) for policies and contracts subject to a principle-based valuation:

3 (i) requirements for the format of reports to the commissioner under [section 13(3)(c)], which must  
4 include information necessary to determine if the valuation is appropriate and in compliance with [this part];

5 (ii) prescribed assumptions for risks over which the company does not have significant control or  
6 influence; and

7 (iii) procedures for corporate governance and oversight of the actuarial function as well as a process for  
8 appropriate waiver or modification of the corporate governance procedures.

9 (d) for policies not subject to a principle-based valuation under [section 13], the minimum valuation  
10 standard must either:

11 (i) be consistent with the minimum standard of valuation prior to the operative date of the valuation  
12 manual as determined in subsections (1) and (2) or as amended as provided in subsection (3);

13 (ii) develop reserves that quantify the benefits and guarantees as well as the funding associated with  
14 the contracts and their risks at a level of conservatism that reflects conditions that include unfavorable events that  
15 have a reasonable probability of occurring; and

16 (e) other components in the valuation manual that the commissioner considers necessary for the smooth  
17 operation of policies or contracts under [this part]. These may include but are not limited to reserve  
18 methodologies, models for measuring risk, generation of economic scenarios, assumptions, margins, use of  
19 company experience, risk measurement, disclosure, certifications, reports, actuarial opinions and memoranda,  
20 transition rules, and internal controls.

21 (5) The commissioner shall specify by rule the data and form of the data required under [section 14] and  
22 to whom the data must be submitted as well as any other requirements including data analysis and reporting of  
23 analysis.

24 (6) In the absence of a specific valuation requirement or if a specific valuation requirement in the  
25 valuation manual is not, in the opinion of the commissioner, in compliance with [this part], the company shall, with  
26 respect to the requirements named as out of compliance with [this part], comply with minimum standard  
27 valuations prescribed by the commissioner by rule.

28 (7) The commissioner may engage a qualified actuary, at the expense of the company, to perform an  
29 actuarial examination of the company and comment on the appropriateness of any reserve assumption or method  
30 used by the company or to review and comment on a company's compliance with any requirement in [this part].

1 The commissioner may rely on the opinion, regarding provisions contained in [this part], of a qualified actuary  
2 engaged by the insurance regulator of another state, district, or territory of the United States. As used in this  
3 subsection, the term "engage" includes employment and contracting.

4 (8) The commissioner may require a company to change any assumption or method that in the opinion  
5 of the commissioner is necessary in order to comply with the requirements of the valuation manual or of [this part].

6 (9) A company shall adjust its reserves as required by the commissioner.

7 (10) The commissioner may take disciplinary action for violations of this section as provided in 33-1-317.

8

9 **NEW SECTION. Section 13. Principle-based valuation.** (1) A company domiciled in Montana shall  
10 establish reserves using a principle-based valuation that meets the conditions for policies or contracts in this  
11 section and as specified in the valuation manual.

12 (2) The principle-based valuation at a minimum must:

13 (a) quantify the benefits and guarantees as well as the funding associated with the contracts and their  
14 risks at a level of conservatism that reflects conditions that include unfavorable events that have a reasonable  
15 probability of occurring during the lifetime of the contracts. The principle-based valuation method must reflect  
16 conditions appropriately adverse to quantify the tail risk for policies and contracts with significant tail risk.

17 (b) incorporate assumptions, risk analysis methods, and financial models and management techniques  
18 that are consistent with but not necessarily identical to those used within the company's overall risk assessment  
19 process. This process must recognize potential differences in financial reporting structures and any prescribed  
20 assumptions or methods.

21 (c) incorporate assumptions derived:

22 (i) as prescribed in the valuation manual; or

23 (ii) if not prescribed in the valuation manual, using:

24 (A) the company's available experience to the extent the experience is relevant and statistically credible;

25 or

26 (B) other relevant and statistically credible experience whenever the company's own data is not  
27 available, relevant, or statistically credible; and

28 (d) provide margins for uncertainty, including adverse deviation and estimation error to the extent that  
29 the greater the uncertainty, the larger the margin and resulting reserve.

30 (3) A company using principle-based valuation for one or more policies or contracts subject to this

1 section and as specified in the valuation manual shall:

2 (a) establish procedures for corporate governance and oversight of the actuarial valuation function  
3 consistent with those described in the valuation manual;

4 (b) provide to the commissioner and its board of directors an annual certification of the effectiveness of  
5 the internal controls with respect to the principle-based valuation. These internal controls must be designed to  
6 assure that all material risks inherent in the liabilities and associated assets subject to the principle-based  
7 valuation are included in the valuation and are performed in accordance with the valuation manual. The  
8 certification must be based on controls in place as of the end of the preceding calendar year.

9 (c) develop a principle-based valuation report that complies with standards prescribed in the valuation  
10 manual. This report must be filed with the commissioner upon the commissioner's request.

11 (4) A principle-based valuation may include a prescribed formulaic reserve component.  
12

13 **NEW SECTION. Section 14. Experience reporting.** (1) A company shall submit mortality, morbidity,  
14 policyholder behavior, expense experience, and other data as prescribed by the commissioner and in accordance  
15 with the valuation manual.

16 (2) The reports in this section are required after the commissioner has adopted rules as provided in  
17 [section 12(2)(d)].  
18

19 **NEW SECTION. Section 15. Confidentiality -- definitions.** (1) Except as provided in subsections  
20 (2), (4), and (5), a company's confidential information is confidential and privileged and is not subject to subpoena,  
21 discovery, or public information requests under 2-6-102 or admissible in evidence in any private civil action.

22 (2) The commissioner may use the confidential information to further any regulatory or legal action  
23 brought against the company as a part of the commissioner's official duties.

24 (3) Neither the commissioner nor any person who receives confidential information while acting under  
25 the authority of the commissioner may be required or permitted to testify in any private civil action concerning a  
26 company's confidential information.

27 (4) Confidential information under this section may be released by the commissioner:

28 (a) with the written consent of the insurer;

29 (b) to other state, federal, and international regulatory agencies or to the NAIC and its affiliates upon  
30 agreement that the confidential information will be kept confidential; or

1 (c) to the American academy of actuaries upon a request that includes a statement that:

2 (i) the confidential information as defined in subsection (8)(a)(i)(A) and (8)(a)(i)(D) is required for use in  
3 professional disciplinary proceedings; and

4 (ii) describes procedures satisfactory to the commission for preserving the confidentiality of the  
5 memorandum or other material.

6 (5) The commissioner may enter into agreements governing the sharing and use of confidential  
7 information consistent with subsection (4).

8 (6) A disclosure to the commissioner under this section or a sharing of confidential information authorized  
9 in subsections (4) and (5) does not constitute a waiver of any applicable privilege or claim of confidentiality for  
10 the confidential information.

11 (7) A privilege established under the law of any state or jurisdiction that is substantially similar to the  
12 privilege established under subsection (1) must be recognized and enforced in any proceeding in this state,  
13 including any court proceedings.

14 (8) As used in this section, the following definitions apply:

15 (a) (i) "Confidential information" means:

16 (A) a memorandum in support of an opinion submitted under 33-2-521 and any other documents,  
17 materials, and other information, including but not limited to all working papers or copies of the working papers  
18 that were created, produced, or obtained by the commissioner or by any other person in connection with the  
19 memorandum or disclosed to the commissioner or to any other person in connection with the memorandum;

20 (B) subject to the provisions of subsection (8)(a)(ii)(A), all documents, materials, and other information  
21 in the course of an examination made under [section 12(7)], including but not limited to all working papers and  
22 copies of the working papers that were created, produced, or obtained by the commissioner or by any other  
23 person in connection with the examination or disclosed to the commissioner or to any other person in connection  
24 with the examination;

25 (C) any reports, documents, materials, or other information developed by a company in support of or in  
26 connection with an annual certification by the company under [section 13(3)(b)] evaluating the effectiveness of  
27 the company's internal controls with respect to a principle-based valuation and any associated documents,  
28 materials, and other information, including but not limited to working papers and copies of the working papers  
29 created, produced, or obtained by the commissioner or by any other person in connection with the reports,  
30 documents, materials, and other information disclosed to the commissioner or to any other person in connection

1 with those reports, documents, materials, and other information;

2 (D) any principle-based valuation report developed under [section 13(3)(c)] and any other documents,  
3 materials, and other information, including but not limited to all working papers and copies of working papers  
4 created, produced, or obtained by the commissioner or any other person in connection with the principle-based  
5 valuation report or disclosed to the commissioner or to any other person in connection with the report; and

6 (E) any experience data and any other documents, materials, data, and other information, including but  
7 not limited to all working papers and copies of working papers created or produced in connection with the  
8 experience data. This information includes any potential company-identifying or personally identifiable information  
9 that is provided to or obtained by the commissioner or any other person in connection with the documents,  
10 materials, data, and other information described in this subsection (8)(a)(i)(E), including but not limited to working  
11 papers and copies of working papers created, produced, or obtained by the commissioner or any other person  
12 or disclosed to the commissioner or to any other person.

13 (ii) The term does not include:

14 (A) an examination report or other material prepared in connection with an examination made under  
15 [section 12(7)] to the extent that the examination report or other material prepared in connection with the  
16 examination would not have been held private and confidential if prepared under 33-1-401; or

17 (B) any portion of confidential information that has been cited by the insurer in its marketing, provided  
18 to any governmental agency other than a state insurance department, released by the insurer to the news media,  
19 or otherwise made public by the insurer in any way.

20 (b) "Experience data" means any documents, materials, data, and other information submitted by a  
21 company under [section 14].

22 (c) "NAIC" means the national association of insurance commissioners and its employees, agents,  
23 consultants, and contractors.

24 (d) "Regulatory agency" includes the agency's employees, agents, consultants, and contractors.

25  
26 **NEW SECTION. Section 16. Rulemaking.** The commissioner shall adopt rules necessary to implement  
27 the provisions of [this part], including but not limited to adopting the valuation manual.

28  
29 **Section 17.** Section 33-2-521, MCA, is amended to read:

30 **"33-2-521. Standard valuation of reserve liabilities law --life insurance.** (1) The commissioner shall

1 annually value or cause to be valued the reserve liabilities (reserves) for all outstanding life insurance policies  
 2 and annuity and pure endowment contracts of every life insurer doing business in this state ~~and may certify the~~  
 3 ~~amount of any reserves, specifying the mortality table or tables, rate or rates of interest, and methods (net level~~  
 4 ~~premium method or other) used in the calculation of reserves~~ issued on or before the operative date of the  
 5 valuation manual. In calculating the reserves under this subsection, the commissioner may use group methods  
 6 and approximate averages for fractions of a year or otherwise.

7 (2) The commissioner shall annually value or cause to be valued the reserve liabilities for all outstanding  
 8 life insurance contracts, annuities, and pure endowment contracts, accident and health contracts, and  
 9 deposit-type contracts of every company issued after the operative date of the valuation manual in accordance  
 10 with the valuation manual.

11 ~~(2)(3)~~ In lieu of the valuation of the reserves required in this section of any foreign or alien insurer, the  
 12 commissioner may accept any valuation made or caused to be made by the insurance supervisory official of any  
 13 state or other jurisdiction when the valuation complies with the minimum standard provided in ~~this section and~~  
 14 ~~if the official of the other state or jurisdiction accepts as sufficient and valid for all legal purposes the certificate~~  
 15 ~~of valuation of the commissioner when the certificate states the valuation to have been made in a specified~~  
 16 ~~manner according to which the aggregate reserves would be at least as large as if they had been computed in~~  
 17 ~~the manner prescribed by the law of that state or jurisdiction~~ [this part].

18 ~~(3)(4)~~ Any insurer that has adopted any standard of valuation producing greater aggregate reserves than  
 19 those calculated according to the minimum ~~standard~~ standards provided in ~~this section~~ [this part] may, with the  
 20 approval of the commissioner, adopt any lower standard of valuation but not lower than the minimum in this  
 21 section. For the purposes of this section, the holding of additional reserves previously determined by ~~a qualified~~  
 22 an appointed actuary to be necessary to render the opinion required in ~~subsection (4)~~ subsections (5) and (6) may  
 23 not be considered to be the adoption of a higher standard of valuation.

24 ~~(4)(5)~~ (a) Each life insurer doing business in this state prior to the operative date of the valuation manual  
 25 shall annually submit the opinion of a qualified actuary as to whether the reserves and related actuarial items held  
 26 in support of the policies and contracts specified by the commissioner by rule are computed appropriately, are  
 27 based on assumptions that satisfy contractual provisions, are consistent with prior reported amounts, and comply  
 28 with applicable laws of this state. The commissioner by rule shall define the specifics of this opinion and add any  
 29 other items considered necessary to its scope.

30 (b) Each life insurer, except as exempted by or pursuant to regulation, shall also annually include in the

1 opinion required by subsection ~~(4)(a)~~ (5)(a) an opinion of the same qualified actuary as to whether the reserves  
2 and related actuarial items held in support of the policies and contracts specified by the commissioner by rule;  
3 ~~when considered in light of the assets held by the insurer with respect to the reserves and related actuarial items;~~  
4 ~~including but not limited to the investment earnings on the assets and the considerations anticipated to be~~  
5 ~~received and retained under the policies and contracts;~~ make adequate provision for the insurer's obligations  
6 under the policies and contracts, including but not limited to the benefits under and expenses associated with the  
7 policies and contracts. In developing the opinion, the qualified actuary shall consider the assets held by the  
8 insurer with respect to the reserves and related actuarial items, including but not limited to the investment  
9 earnings on the assets and the considerations anticipated to be received and retained under the policies and  
10 contracts.

11 (c) The commissioner may provide by rule for a transition period for establishing any higher reserves  
12 that the qualified actuary may consider necessary in order to render the opinion required by this subsection ~~(4)~~  
13 (5).

14 (d) Each opinion required by this subsection ~~(4)~~ (5) must be governed by the following provisions:

15 (i) A memorandum, in form and substance acceptable to the commissioner as specified by rule, must  
16 be prepared to support each actuarial opinion.

17 (ii) If the insurer fails to provide a supporting memorandum at the request of the commissioner within a  
18 period specified by rule or if the commissioner determines that the supporting memorandum provided by the  
19 insurer fails to meet the standards prescribed by the rules or is otherwise unacceptable to the commissioner, the  
20 commissioner may engage a qualified actuary at the expense of the insurer to review the opinion and the basis  
21 for the opinion and to prepare any supporting memorandum as is required by the commissioner.

22 (iii) The opinion must be submitted with the annual statement reflecting the valuation of the reserve  
23 liabilities for each year ending on or after December 31, 1996.

24 (iv) The opinion must apply to all business in force, including individual and group health insurance plans,  
25 in form and substance acceptable to the commissioner as specified by rule.

26 (v) The opinion must be based on standards adopted from time to time by the actuarial standards board  
27 and on additional standards as the commissioner may prescribe by rule.

28 (vi) In the case of an opinion required to be submitted by a foreign or alien insurer, the commissioner may  
29 accept the opinion filed by that insurer with the insurance supervisory official of another state if the commissioner  
30 determines that the opinion reasonably meets the requirements applicable to a company domiciled in this state.

1 (vii) Except in cases of fraud or willful misconduct, the qualified actuary is not liable for damages to any  
 2 person, other than the insurer and the commissioner, for any act, error, omission, decision, or conduct with  
 3 respect to the actuary's opinion.

4 (viii) Disciplinary action by the commissioner against the insurer or the qualified actuary must be defined  
 5 in rules by the commissioner.

6 ~~(ix) Any memorandum in support of the opinion and any other material provided by the insurer to the  
 7 commissioner in connection with those items must be kept confidential by the commissioner, may not be made  
 8 public, and is not subject to subpoena, other than for the purpose of defending an action seeking damages from  
 9 any person by reason of any action required by this subsection (4) or by rules promulgated under this subsection  
 10 (4). However, the memorandum or other material may otherwise be released by the commissioner:~~

11 ~~——— (A) with the written consent of the insurer; or~~

12 ~~——— (B) to the American academy of actuaries upon request stating that the memorandum or other material  
 13 is required for the purpose of professional disciplinary proceedings and setting forth procedures satisfactory to  
 14 the commissioner for preserving the confidentiality of the memorandum or other material. Once any portion of  
 15 the confidential memorandum is cited by the insurer in its marketing, is cited before any governmental agency  
 16 other than a state insurance department, or is released by the insurer to the news media, all portions of the  
 17 confidential memorandum are no longer confidential.~~

18 ~~——— (5) For purposes of this section, "qualified actuary" means a member in good standing of the American  
 19 academy of actuaries who meets the requirements set forth in the academy's rules.~~

20 (6) (a) After the operative date of the valuation manual, each life insurer doing business in this state shall  
 21 annually submit the opinion of a qualified actuary regarding whether the reserves and related actuarial items held  
 22 in support of the policies and contracts specified by the commissioner by rule are:

23 (i) computed appropriately;

24 (ii) based on assumptions that satisfy contractual provisions;

25 (iii) consistent with prior reported amounts; and

26 (iv) in compliance with the applicable laws of this state.

27 (b) A qualified actuary shall prepare a memorandum in support of each actuarial opinion under this  
 28 subsection (6). The memorandum must be in the form and substance specified in the valuation manual and as  
 29 provided by the commissioner.

30 (c) The opinion under this subsection (6):



1 (i) must be submitted with the annual statement reflecting the valuation of the reserve liabilities for each  
 2 year ending on or after the operative date of the valuation manual;

3 (ii) must apply to all policies and contracts subject to this subsection (6) and to other actuarial liabilities  
 4 identified in the valuation manual; and

5 (iii) must be based on the actuarial standards board's standards and any additional standards prescribed  
 6 in the valuation manual.

7 (d) If the insurer fails to provide a supporting memorandum at the request of the commissioner within  
 8 a period specified in the valuation manual or if the commissioner determines that the supporting memorandum  
 9 provided by the insurer fails to meet the standards prescribed by the valuation manual or is otherwise  
 10 unacceptable to the commissioner, the commissioner may engage a qualified actuary at the expense of the  
 11 insurer to review the opinion and the basis for the opinion and prepare the supporting memorandum required by  
 12 the commissioner.

13 (e) For an opinion required to be submitted by a foreign or alien insurer, the commissioner may accept  
 14 the opinion filed by that insurer with the insurance supervisory official of another state if the commissioner  
 15 determines that the opinion reasonably meets the requirements applicable to an insurer domiciled in this state.

16 (f) (i) Except as provided in subsection (6)(f)(ii), the appointed actuary is not liable for damages to any  
 17 person other than the insurer and the commissioner for any act, error, omission, decision, or conduct with respect  
 18 to the appointed actuary's opinion.

19 (ii) The provisions of subsection (6)(f)(i) do not apply in cases of fraud or willful misconduct.

20 (g) The commissioner shall define by rule any disciplinary action that may be taken by the commissioner  
 21 against the insurer or the appointed actuary."

22

23 **Section 18.** Section 33-2-523, MCA, is amended to read:

24 **"33-2-523. Contracts on or after operative date of 33-20-213 and prior to operative date of**  
 25 **valuation manual -- valuation.** (1) This section applies to only those policies and contracts issued prior to the  
 26 date of adoption of the valuation manual, which is the operative date for the valuation manual, and on or after the  
 27 operative date of 33-20-213, except as otherwise provided in 33-2-524 for group annuity and pure endowment  
 28 contracts issued prior to that date.

29 (2) Except as otherwise provided in 33-2-524, 33-2-525, and 33-2-537(2), the minimum standard for the  
 30 valuation of all the policies and contracts issued prior to October 1, 1995, is the standard provided by the laws

1 in effect prior to October 1, 1995. Except as otherwise provided in 33-2-524, 33-2-525, and 33-2-537(2), the  
2 minimum standard for the valuation of all policies and contracts issued prior to the operative date of the valuation  
3 manual, as provided in subsection (1), is the commissioner's reserve valuation methods defined in 33-2-525,  
4 33-2-526(3) and (4), and 33-2-537, 5% interest for group annuity and pure endowment contracts, and 3 1/2%  
5 interest for all other policies and contracts or, in the case of life insurance policies and contracts other than  
6 annuity and pure endowment contracts issued on or after March 17, 1973, 4% interest for all other policies issued  
7 prior to July 1, 1979, 5 1/2% interest for single-premium life insurance policies, and 4 1/2% interest for all other  
8 policies issued on or after July 1, 1979, and the following tables:

9 (a) for all ordinary policies of life insurance issued on the standard basis, excluding any disability and  
10 accidental death benefits in the policies:

11 (i) the 1941 commissioners standard ordinary mortality table for policies issued prior to the operative date  
12 of 33-20-206, as amended, and the 1958 commissioners standard ordinary mortality table for policies issued on  
13 or after that operative date but prior to January 1, 1989, except that for any category of the policies issued on  
14 female risks, modified net premiums and present values, referred to in 33-2-525 and 33-2-526, may be calculated,  
15 at the option of the insurer, with the approval of the commissioner, according to an age younger than the actual  
16 age of the insured;

17 (ii) for policies issued prior to the operative date of the valuation manual but on or after January 1, 1989:

18 (A) the 1980 commissioners standard ordinary mortality table;

19 (B) at the election of the insurer for any one or more specified policies of life insurance, the 1980  
20 commissioners standard ordinary mortality table with 10-year select mortality factors; or

21 (C) any ordinary mortality table adopted after 2001 by the national association of insurance  
22 commissioners that is approved by the commissioner by rule for use in determining the minimum standard of  
23 valuation for policies;

24 (iii) for policies issued on or after January 1, 2005, and before January 1, 2009, at the election of the  
25 insurer for any one or more specified policies of life insurance, the 2001 commissioners standard ordinary  
26 mortality table; or

27 (iv) for policies issued prior to the operative date of the valuation manual but on or after January 1, 2009,  
28 the 2001 commissioners standard ordinary mortality table;

29 (b) for all industrial life insurance policies issued on the standard basis, excluding any disability and  
30 accidental death benefits in the policies, the 1941 standard industrial mortality table for policies issued prior to

1 the operative date of 33-20-207 and, for policies issued on or after that operative date, the 1961 commissioners  
2 standard industrial mortality table or any industrial mortality table adopted after 1980 by the national association  
3 of insurance commissioners that is approved by the commissioner by rule for use in determining the minimum  
4 standard of valuation for the policies;

5 (c) for individual annuity and pure endowment contracts, excluding any disability and accidental death  
6 benefits in the policies, the 1937 standard annuity mortality table or, at the option of the insurer, the annuity  
7 mortality table for 1949, ultimate, or any modification of either of these tables approved by the commissioner;

8 (d) for group annuity and pure endowment contracts, excluding any disability and accidental death  
9 benefits in the policies, the group annuity mortality table for 1951, any modification of the table approved by the  
10 commissioner, or, at the option of the insurer, any of the tables or modifications of tables specified for individual  
11 annuity and pure endowment contracts;

12 (e) (i) for total and permanent disability benefits in or supplementary to ordinary policies or contracts:

13 (A) for policies or contracts issued on or after January 1, 1966, the tables of period 2 disablement rates  
14 and the 1930 to 1950 termination rates of the 1952 disability study of the society of actuaries, with due regard  
15 to the type of benefit, or any tables of disablement rates and termination rates adopted after 1980 by the national  
16 association of insurance commissioners that are approved by the commissioner by rule for use in determining  
17 the minimum standard of valuation for the policies;

18 (B) for policies or contracts issued on or after January 1, 1961, and prior to January 1, 1966, either the  
19 tables or, at the option of the insurer, the class 3 disability table (1926); and

20 (C) for policies issued prior to January 1, 1961, the class 3 disability table (1926);

21 (ii) any table must, for active lives, be combined with a mortality table permitted for calculating the  
22 reserves for life insurance policies;

23 (f) (i) for accidental death benefits in or supplementary to policies:

24 (A) for policies issued on or after January 1, 1966, the 1959 accidental death benefits table or any  
25 accidental death benefits table adopted after 1980 by the national association of insurance commissioners that  
26 is approved by the commissioner by rule for use in determining the minimum standard of valuation for the policies;

27 (B) for policies issued on or after January 1, 1961, and prior to January 1, 1966, a table referenced in  
28 subsection (2)(f)(i)(A) or, at the option of the insurer, the intercompany double indemnity mortality table; and

29 (C) for policies issued prior to January 1, 1961, the intercompany double indemnity mortality table;

30 (ii) either table must be combined with a mortality table permitted for calculating the reserves for life

1 insurance policies;

2 (g) for group life insurance, life insurance issued on the substandard basis, and other special benefits,  
3 the tables approved by the commissioner."

4

5 **Section 19.** Section 33-2-525, MCA, is amended to read:

6 **"33-2-525. Commissioner's reserve valuation method.** (1) Except as otherwise provided in subsection  
7 (4) of this section, 33-2-526(3) and (4), and 33-2-537(2), reserves according to the commissioner's reserve  
8 valuation method, for the life insurance and endowment benefits of policies providing for a uniform amount of  
9 insurance and requiring the payment of uniform premiums, must be the excess, if any, of the present value, at  
10 the date of valuation, of future guaranteed benefits provided for by the policies, over the then present value of  
11 any future modified net premiums. The modified net premiums for any policy must be the uniform percentage of  
12 the respective contract premiums for the benefits that the present value, at the date of issue of the policy, of all  
13 modified net premiums must be equal to the sum of the then present value of the benefits provided for by the  
14 policy and the excess of subsection (1)(a) over subsection (1)(b), as follows:

15 (a) a net level annual premium equal to the present value, at the date of issue, of benefits provided for  
16 after the first policy year, divided by the present value, at the date of issue of an annuity of one per annum  
17 payable on the first and each subsequent anniversary of the policy on which a premium falls due. However, the  
18 net level annual premium may not exceed the net level annual premium on the 19-year premium whole life plan  
19 for insurance of the same amount at an age 1 year higher than the age at issue of the policy.

20 (b) a net 1-year term premium for benefits provided for in the first policy year.

21 (2) (a) For each life insurance policy issued on or after January 1, 1987, for which the contract premium  
22 in the first policy year exceeds that of the second year, for which a comparable additional benefit is not provided  
23 in the first year for the excess, and that provides an endowment benefit, a cash surrender value, or a combination  
24 of both in an amount greater than the excess premium, the reserve according to the commissioner's reserve  
25 valuation method, as of any policy anniversary occurring on or before the assumed ending date as the first policy  
26 anniversary on which the sum of any endowment benefit and any cash surrender value then available is greater  
27 than the excess premium, is, except as otherwise provided in 33-2-526, the greater of the reserve as of the policy  
28 anniversary calculated as described in subsection (1) or the reserve as of the policy anniversary calculated as  
29 described in subsection (1) with the following exceptions:

30 (i) the value defined in subsection (1)(a) is reduced by 15% of the amount of the excess first-year

1 premium;

2 (ii) all present values of benefits and premiums are determined without reference to premiums or benefits  
3 provided for in the policy after the assumed ending date;

4 (iii) the policy is assumed to mature on the assumed ending date as an endowment; and

5 (iv) the cash surrender value provided on the assumed ending date is considered an endowment benefit.

6 (b) In making the comparisons in subsection (2)(a), the mortality and interest bases stated in 33-2-523  
7 and 33-2-527 must be used.

8 (3) Reserves according to the commissioner's reserve valuation method for the following must be  
9 calculated by a method consistent with the principles of this section, except that any extra premiums charged  
10 because of impairments or special hazards must be disregarded in the determination of modified net premiums:

11 (a) life insurance policies providing for a varying amount of insurance or requiring the payment of varying  
12 premiums;

13 (b) group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred  
14 compensation, established or maintained by an employer, including a partnership or sole proprietorship, or by  
15 an employee organization, or by both, other than a plan providing individual retirement accounts or individual  
16 retirement annuities under section 408 of the Internal Revenue Code, as amended;

17 (c) disability and accidental death benefits in all policies and contracts; and

18 (d) all other benefits, except life insurance and endowment benefits in life insurance policies and benefits  
19 provided by all other annuity and pure endowment contracts.

20 (4) (a) Subsection (4)(b) applies to any annuity and pure endowment contracts other than group annuity  
21 and pure endowment contracts purchased under a retirement plan or plan of deferred compensation established  
22 or maintained by an employer, including a partnership or sole proprietorship, or by an employee organization,  
23 or by both, other than a plan providing individual retirement accounts or individual retirement annuities under  
24 section 408 of the Internal Revenue Code, as amended.

25 (b) Reserves according to the commissioner's annuity reserve method for benefits under annuity or pure  
26 endowment contracts, excluding any disability and accidental death benefits in the contracts, must be the greatest  
27 of the respective excesses of the present values, at the date of valuation, of the future guaranteed benefits,  
28 including guaranteed nonforfeiture benefits, provided for by the contracts at the end of each respective contract  
29 year, over the present value, at the date of valuation, of any future valuation considerations derived from future  
30 gross considerations required by the terms of the contract that become payable prior to the end of the respective

1 contract year. The future guaranteed benefits must be determined by using the mortality table, if any, and the  
 2 interest rate or rates specified in the contracts for determining guaranteed benefits. The valuation considerations  
 3 are the portions of the respective gross considerations applied under the terms of the contracts to determine  
 4 nonforfeiture values.

5 (c) The commissioner's reserve valuation method provided by this section is subject to the provisions  
 6 of the valuation manual as adopted by the commissioner."

7

8 **Section 20.** Section 33-2-526, MCA, is amended to read:

9 **"33-2-526. Limits -- options -- minimum reserves.** (1) (a) An insurer's aggregate reserves for all life  
 10 insurance policies, excluding disability and accidental death benefits issued on or after October 1, 1995, and prior  
 11 to adoption of the valuation manual by the commissioner by rule may not be less than the aggregate reserves  
 12 calculated in accordance with the methods set forth in 33-2-525, 33-2-537(2), subsection (3) of this section, and  
 13 the mortality table or tables and rate or rates of interest used in calculating nonforfeiture benefits for the policies.

14 (b) After the operative date of the valuation manual, the reserve valuation methods determined by the  
 15 commissioner under 33-2-525(4)(c) must be used in conjunction with the provisions of this section.

16 (2) Reserves for all policies and contracts issued prior to October 1, 1995, may be calculated, at the  
 17 option of the insurer, according to standards that produce greater aggregate reserves for those policies and  
 18 contracts than the minimum reserves required by the laws in effect immediately prior to October 1, 1995.  
 19 Reserves for any category of policies, contracts, or benefits as established by the commissioner, issued on or  
 20 after October 1, 1995, may be calculated at the option of the insurer according to any standards which produce  
 21 greater aggregate reserves for a category than those calculated according to the minimum standard provided in  
 22 this section, but the rate or rates of interest used for policies and contracts, other than annuity and pure  
 23 endowment contracts, may not be higher than the corresponding rate or rates of interest used in calculating any  
 24 nonforfeiture benefits provided for a category.

25 (3) If in any contract year the gross premium charged by any life insurer on any policy or contract is less  
 26 than the valuation net premium for the policy or contract calculated by the method used in calculating the reserve  
 27 on the policy or contract but using the minimum valuation standards of mortality and rate of interest, the minimum  
 28 reserve required for the policy or contract must be the greater of either the reserve calculated according to the  
 29 mortality table, rate of interest, and method actually used for the policy or contract or the reserve calculated by  
 30 the method actually used for the policy or contract but using the minimum standards of mortality and rate of

1 interest and replacing the valuation net premium by the actual gross premium in each contract year for which the  
 2 valuation net premium exceeds the actual gross premium. The minimum valuation standards of mortality and rate  
 3 of interest referred to in this section are those standards stated in 33-2-524 and 33-2-527.

4 (4) For every life insurance policy issued after December 30, 1986, for which the gross premium in the  
 5 first policy year exceeds that of the second year, for which a comparable additional benefit is not provided in the  
 6 first year for an excess, and that provides an endowment benefit, a cash surrender value, or a combination of  
 7 both in an amount greater than the excess premium, subsections (1) through (3) of this section must be applied  
 8 as if the method actually used in calculating the reserve for the policy were the method described in 33-2-525(1).  
 9 The minimum reserve at each policy anniversary of the policy must be the greater of the minimum reserve  
 10 calculated in accordance with 33-2-525 and the minimum reserve calculated in accordance with this section."  
 11

12 **Section 21.** Section 33-2-527, MCA, is amended to read:

13 **"33-2-527. Interest rates -- determination of minimum standard valuation.** (1) ~~The~~ In addition to the  
 14 requirements of the valuation manual, the calendar year statutory valuation interest rates as established in this  
 15 section must be used in determining the minimum standard for the valuation of:

16 (a) all life insurance policies issued in a particular calendar year on or after January 1, 1989;

17 (b) all individual annuity and pure endowment contracts issued in a particular calendar year on or after  
 18 January 1, 1984;

19 (c) all annuities and pure endowments purchased in a particular calendar year on or after January 1,  
 20 1984, under group annuity and pure endowment contracts; and

21 (d) the net increase, if any, in a particular calendar year after January 1, 1984, in amounts held under  
 22 guaranteed interest contracts.

23 (2) Except as provided in subsection (3), the calendar year statutory valuation interest rates are  
 24 determined as follows and the results rounded to the nearer 1/4 of 1%, when R1 is the lesser of R and .09, R2  
 25 is the greater of R and .09, R is the reference interest rate established in 33-2-529, and W is the weighting factor  
 26 established in 33-2-528:

27 (a) for life insurance:

28 Interest rate =  $.03 + W(R1 - .03) + (W/2)(R2 - .09)$ ;

29 (b) for single-premium immediate annuities and for annuity benefits involving life contingencies arising  
 30 from other annuities with cash settlement options and from guaranteed interest contracts with cash settlement

1 options:

2 Interest rate = .03 + W(R - .03);

3 (c) for other annuities with:

4 (i) cash settlement options and guaranteed interest contracts with cash settlement options, valued on  
5 an issue year basis, except as stated in subsection (2)(b), the formula for life insurance stated in subsection (2)(a)  
6 applies to annuities and guaranteed interest contracts with guarantee durations in excess of 10 years and the  
7 formula for single-premium immediate annuities stated in subsection (2)(b) applies to annuities and guaranteed  
8 interest contracts with guarantee durations of 10 years or less;

9 (ii) no cash settlement options and for guaranteed interest contracts with no cash settlement options, the  
10 formula for single-premium immediate annuities stated in subsection (2)(b) applies; and

11 (iii) cash settlement options and guaranteed interest contracts with cash settlement options valued on  
12 a change-in-fund basis, the formula for single-premium immediate annuities stated in subsection (2)(b) applies.

13 (3) If the calendar year statutory valuation interest rate for any life insurance policies issued in any  
14 calendar year differs from the corresponding actual rate for similar policies issued in the immediately preceding  
15 calendar year by less than 1/2 of 1%, the calendar year statutory valuation interest rate for such life insurance  
16 policies is equal to the corresponding actual rate for the immediately preceding calendar year. For purposes of  
17 this subsection, the calendar year statutory valuation interest rate for life insurance policies issued in a calendar  
18 year must be determined for 1980 (using the reference interest rate defined for 1979) and must be determined  
19 for each subsequent calendar year regardless of when 33-20-208 becomes operative."  
20

21 **Section 22.** Section 33-2-537, MCA, is amended to read:

22 **"33-2-537. Reserve calculation -- indeterminate premium plans -- minimum standards for disability**  
23 **plans and accident and health plans.** (1) In the case of a plan of life insurance that provides for future premium  
24 determination, the amounts of which are to be determined by the insurer based on then estimates of future  
25 experience, or in the case of a plan of life insurance or annuity that is of a nature that the minimum reserves  
26 cannot be determined by the methods described in 33-2-525 and 33-2-526(3), the reserves that are held under  
27 the plan must:

28 (a) be appropriate in relation to the benefits and the pattern of premiums for that plan; and

29 (b) be computed by a method that is consistent with the principles of 33-2-521 through 33-2-529.

30 (2) The commissioner may promulgate a rule containing the minimum standards applicable to the



1 valuation of disability plans issued prior to the operative date of the valuation manual. For accident and health  
 2 insurance contracts issued on or after the operative date of the valuation manual and after the applicable effective  
 3 date provided in [section 12], the minimum standard of valuation prescribed by the valuation manual must be  
 4 used."

5

6 **Section 23.** Section 33-2-1101, MCA, is amended to read:

7 **"33-2-1101. Definitions.** As used in this part, the following terms ~~shall have the respective meanings~~  
 8 ~~hereinafter set forth~~ definitions apply; unless the context ~~shall requires~~ otherwise ~~require~~:

9 (1) An "affiliate" of or person "affiliated" with a specific person is a person that directly, or indirectly  
 10 through one or more intermediaries, controls or is controlled by or is under common control with the person  
 11 specified.

12 (2) ~~The term "control"~~ "Control" ~~(including the terms "controlling", "controlled by", and "under common~~  
 13 ~~control with")~~, means the possession, direct or indirect, of the power to direct or cause the direction of the  
 14 management and policies of a person, ~~whether~~. This power may be evidenced through the ownership of voting  
 15 securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise,  
 16 unless the power is the result of an official position with or corporate office held by the person. Control ~~shall be~~  
 17 is presumed to exist if any person; directly or indirectly; owns, controls, holds with the power to vote, or holds  
 18 proxies representing 10% or more of the voting securities of any other person. This presumption may be rebutted  
 19 by a showing made in the manner provided by 33-2-1112 that control does not exist in fact. The commissioner  
 20 may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific  
 21 findings of fact to support such determination, that control exists in fact, notwithstanding the absence of a  
 22 presumption to that effect.

23 (3) "Enterprise risk" means any activity, circumstance, event, or series of events involving one or more  
 24 affiliates of an insurer that is likely to have a material adverse effect on the financial condition or liquidity of the  
 25 insurer or its insurance holding company system as a whole. The term includes but is not limited to anything that  
 26 would cause the insurer's risk-based capital to fall into a company action level, as provided in 33-2-1904, or that  
 27 would cause the insurer to be in hazardous financial condition as determined by the commissioner pursuant to  
 28 33-2-1321.

29 ~~(3)(4)~~ (4) An ~~"insurance~~ "Insurance holding company system" ~~consists of~~ means two or more affiliated  
 30 persons, one or more of which is an insurer.

1           ~~(4)(5)~~ The term "insurer" shall have "Insurer" has the same meaning as set forth provided in 33-1-201,  
 2 except that ~~it shall~~ the term does not include agencies, authorities, or instrumentalities of the United States, its  
 3 possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political  
 4 subdivision of a state.

5           ~~(5)(6)~~ (a) A ~~"person"~~ is "Person" means an individual, a corporation, a partnership, an association, a  
 6 joint-stock company, a trust, an unincorporated organization, any similar entity, or any combination of the  
 7 foregoing acting in concert ~~but shall~~.

8           **(b)** The term does not include any securities broker performing no more than the usual and customary  
 9 broker's function.

10           ~~(6)(7)~~ A "securityholder" of a specified person is one who owns any security of ~~such~~ that person,  
 11 including common stock, preferred stock, debt obligations, and any other security convertible into or evidencing  
 12 the right to acquire any of the foregoing.

13           ~~(7)(8)~~ A "subsidiary" of a specified person is an affiliate controlled by ~~such~~ that person directly or  
 14 indirectly through one or more intermediaries.

15           ~~(8)(9)~~ The term "voting "Voting security" shall include means any security convertible into or evidencing  
 16 a right to acquire a voting security."  
 17

18           **Section 24.** Section 33-2-1104, MCA, is amended to read:

19           **"33-2-1104. Acquisition or divestiture of control of or merger with domestic insurer -- filing**  
 20 **requisites.** (1) (a) A person other than the issuer may not make a tender offer for or a request or invitation for  
 21 tenders of or enter into any agreement to exchange securities for, seek to acquire, or acquire, in the open market  
 22 or otherwise, any voting security of a domestic insurer if, after the consummation of the transaction, the person  
 23 would, directly or indirectly or by conversion or by exercise of any right to acquire, be in control of the insurer.

24           **(b)** A person may not enter into an agreement to merge with or otherwise to acquire control of a domestic  
 25 insurer unless, at the time any offer, request, or invitation is made or any agreement is entered into or prior to the  
 26 acquisition of the securities if an offer or agreement is not involved, the person has filed with the commissioner  
 27 and has sent to the insurer, and the insurer has sent to its shareholders, a statement as provided in subsection  
 28 (3) containing the information required by this section and the offer, request, invitation, agreement, or acquisition  
 29 has been approved by the commissioner in the manner prescribed in this section. ~~For purposes of this section,~~  
 30 ~~a domestic insurer includes any other person controlling a domestic insurer unless the other person is either~~

1 ~~directly or through its affiliates primarily engaged in business other than the business of insurance.~~

2 (2) (a) A controlling person of a domestic insurer seeking to divest its controlling interest in the domestic  
3 insurer in any manner shall file for approval a confidential notice of its proposed divestiture at least 30 days prior  
4 to the cessation of control.

5 (b) The information in the notice must remain confidential until the conclusion of the transaction unless  
6 the commissioner, at the commissioner's discretion, determines confidential treatment will interfere with  
7 enforcement of this section.

8 (c) Subsections (2)(a) and (2)(b) do not apply to persons filing a statement under subsection (1).

9 ~~(2)(3)~~ The statement to be filed with the commissioner must be made under oath or affirmation and must  
10 contain the following information:

11 (a) the name and address of each person by whom or on whose behalf the merger or other acquisition  
12 of control referred to in subsection (1) is to be effected, who is called the "acquiring party":

13 (i) if the person is an individual, the principal occupation and all offices and positions held during the past  
14 5 years and any conviction of crimes other than minor traffic violations during the past 10 years;

15 (ii) if the person is not an individual:

16 (A) a report of the nature of its business operations during the past 5 years or for a lesser period that the  
17 person and any predecessors have been in existence;

18 (B) an informative description of the business intended to be done by the person and the person's  
19 subsidiaries; and

20 (C) a list of all individuals who are or who have been selected to become directors or executive officers  
21 of the person or who perform or will perform functions appropriate to the positions. The list must include for each  
22 individual the information required by subsection ~~(2)(a)(i)~~ (3)(a)(i).

23 (b) the source, nature, and amount of the consideration used or to be used in effecting the merger or  
24 other acquisition of control, a description of any transaction in which funds were or are to be obtained for any  
25 purpose, and the identity of persons furnishing the consideration, provided that when a source of consideration  
26 is a loan made in the lender's ordinary course of business, the identity of the lender must remain confidential if  
27 the person filing the statement requests;

28 (c) fully audited financial information as to the earnings and financial condition of each acquiring party  
29 for the preceding 5 fiscal years of each acquiring party, or for a lesser period that the acquiring party and any  
30 predecessors have been in existence, and similar unaudited information as of a date not earlier than 90 days prior

1 to the filing of the statement;

2 (d) any plans or proposals that each acquiring party may have to liquidate the insurer, to sell its assets  
3 or merge or consolidate it with any person, or to make any other material change in its business or corporate  
4 structure or management;

5 (e) the number of shares of any security referred to in subsection (1) that each acquiring party proposes  
6 to acquire and the terms of the offer, request, invitation, agreement, or acquisition referred to in subsection (1)  
7 and a statement as to the method by which the fairness of the proposal was arrived at;

8 (f) the amount of each class of any security referred to in subsection (1) that is beneficially owned or  
9 concerning which there is a right to acquire beneficial ownership by each acquiring party;

10 (g) a full description of any contracts, arrangements, or understandings with respect to any security  
11 referred to in subsection (1) in which any acquiring party is involved, including but not limited to transfer of any  
12 of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees  
13 against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. The  
14 description must identify the persons with whom the contracts, arrangements, or understandings have been  
15 entered into.

16 (h) a description of the purchase of any security referred to in subsection (1) by an acquiring party during  
17 the 12 calendar months preceding the filing of the statement, including the dates of purchase, names of the  
18 purchasers, and consideration paid or agreed to be paid for the security;

19 (i) a description of any recommendations to purchase any security referred to in subsection (1) during  
20 the 12 calendar months preceding the filing of the statement made by any acquiring party or by anyone based  
21 upon interviews or at the suggestion of the acquiring party;

22 (j) copies of all tender offers for, requests or invitations for tenders of, exchange offers for, and  
23 agreements to acquire or exchange any securities referred to in subsection (1) and, if distributed, of additional  
24 soliciting material relating to the offers or agreements;

25 (k) the terms of any agreement, contract, or understanding made with any broker-dealer as to solicitation  
26 of securities referred to in subsection (1) for tender and the amount of any fees, commissions, or other  
27 compensation to be paid to broker-dealers with regard to the solicitation;

28 (l) an agreement by which the person required to file the statement referred to in subsection (1) agrees  
29 to provide the annual enterprise risk report for as long as control exists;

30 (m) an acknowledgment by the person required to file the statement referred to in subsection (1) that

1 the person and all affiliates within its control in the insurance holding company system agree to provide  
 2 information to the commissioner upon request if the commissioner determines the information is necessary to  
 3 evaluate enterprise risk to the insurer; and

4 ~~(f)~~(n) additional information that the commissioner may by rule prescribe as necessary or appropriate  
 5 for the protection of policyholders and securityholders of the insurer or in the public interest.

6 ~~(3)~~(4) If the person required to file the statement referred to in subsection (1) is a partnership, limited  
 7 partnership, syndicate, or other group, the commissioner may require that the information called for by subsection  
 8 ~~(2)~~ (3) must be given with respect to each partner of the partnership or limited partnership, each member of the  
 9 syndicate or group, and each person who controls the partner or member. If any partner, member, or person is  
 10 a corporation or the person required to file the statement referred to in subsection (1) is a corporation, the  
 11 commissioner may require that the information required by subsection ~~(2)~~ (3) be given with respect to the  
 12 corporation, each officer and director of the corporation, and each person who is directly or indirectly the  
 13 beneficial owner of more than 10% of the outstanding voting securities of the corporation.

14 ~~(4)~~(5) If any material change occurs in the facts set forth in the statement filed with the commissioner  
 15 and sent to the insurer pursuant to this section, an amendment ~~setting forth~~ describing the change, together with  
 16 copies of all documents and other material relevant to the change, must be filed with the commissioner and sent  
 17 to the insurer within 2 business days after the person learns of the change. The insurer shall send the amendment  
 18 to its shareholders.

19 ~~(5)~~(6) If any offer, request, invitation, agreement, or acquisition referred to in subsection (1) is proposed  
 20 to be made by means of a registration statement under the Securities Act of 1933 or in circumstances requiring  
 21 the disclosure of similar information under the Securities Exchange Act of 1934 or under a state law requiring  
 22 similar registration or disclosure, the person required to file the statement referred to in subsection (1) may use  
 23 the documents in furnishing the information called for by that statement.

24 (7) As used in this section:

25 (a) "domestic insurer" includes any person controlling a domestic insurer unless the person, as  
 26 determined by the commissioner, is primarily engaged in a business other than the business of insurance;

27 (b) "person" does not include a securities broker holding, in the usual and customary broker's function,  
 28 less than 20% of the voting securities of an insurance company or of any person who controls an insurance  
 29 company."

30

1           **Section 25.** Section 33-2-1105, MCA, is amended to read:

2           **"33-2-1105. Approval by commissioner -- hearings -- notice.** (1) The commissioner shall approve  
3 any merger or other acquisition or divestiture of control referred to in ~~33-2-1104(1)~~ 33-2-1104 unless, after a  
4 public hearing, the commissioner finds that:

5           (a) after the change of control, the domestic insurer referred to in ~~33-2-1104(1)~~ 33-2-1104 would not be  
6 able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it the  
7 domestic insurer is presently licensed;

8           (b) the effect of the merger or other acquisition of control would be substantially to lessen competition  
9 in insurance in this state or tend to create a monopoly;

10           (c) the financial condition of any acquiring party might jeopardize the financial stability of the insurer or  
11 prejudice the interest of ~~its~~ the insurer's policyholders or the interests of any remaining securityholders who are  
12 unaffiliated with the acquiring party;

13           (d) the terms of the offer, request, invitation, agreement, or acquisition referred to in ~~33-2-1104(1)~~  
14 33-2-1104 are unfair and unreasonable to the securityholders of the insurer;

15           (e) the plans or proposals that the acquiring party has to liquidate the insurer, to sell its assets or  
16 consolidate or merge it with any person, or to make any other material change in its business or corporate  
17 structure or management are unfair and unreasonable to policyholders of the insurer and not in the public interest;

18           (f) the competence, experience, and integrity of those persons who would control the operation of the  
19 insurer are of the nature that it the change in control would not be in the interest of policyholders of the insurer  
20 and of the public ~~to permit the merger or other acquisition of control.~~

21           (2) The public hearing referred to in subsection (1) must be held within 30 days after the statement  
22 required by 33-2-1104(1) is filed, and at least 20 days' notice of the hearing must be given by the commissioner  
23 to the person filing the statement. Not less than 7 days' notice of the public hearing must be given by the person  
24 filing the statement to the insurer and to other persons as may be designated by the commissioner. The insurer  
25 shall give notice to its securityholders. The commissioner shall make a determination within 30 days after the  
26 conclusion of the hearing. At the hearing, the person filing the statement, the insurer, any person to whom notice  
27 of hearing was sent, and any other person whose interests may be affected has the right to present evidence,  
28 examine and cross-examine witnesses, and offer oral and written arguments and to conduct discovery  
29 proceedings in the same manner that is presently allowed in the district court of this state. All discovery  
30 proceedings must be concluded not later than 3 days prior to the commencement of the public hearing.

1 (3) All statements, amendments, or other material filed pursuant to 33-2-1104(1) through ~~(4)~~ (5) and all  
 2 notices of public hearings held pursuant to subsection (1) of this section must be mailed by the insurer to its  
 3 shareholders within 5 business days after the insurer has received the statements, amendments, other material,  
 4 or notices. The expenses of mailing must be borne by the person making the filing. As security for the payment  
 5 of the expenses, the person shall file with the commissioner an acceptable bond or other deposit in an amount  
 6 to be determined by the commissioner.

7 (4) The commissioner may retain at the ~~expense of the acquiring party's expense or divesting party~~ any  
 8 attorneys, actuaries, accountants, and other experts not otherwise a part of the commissioner's staff as may be  
 9 reasonably necessary to assist the commissioner in reviewing the proposed acquisition of control."  
 10

11 **Section 26.** Section 33-2-1106, MCA, is amended to read:

12 **"33-2-1106. Exemptions -- violations -- jurisdiction.** (1) The provisions of 33-2-1104, 33-2-1105, and  
 13 this section do not apply to an offer, request, invitation, agreement, or acquisition that the commissioner by order  
 14 exempts from those sections as:

15 (a) not having been made or entered into for the purpose and not having the effect of changing or  
 16 influencing the control of a domestic insurer; or

17 (b) otherwise not comprehended within the purposes of 33-2-1104 and 33-2-1105.

18 (2) The following are violations of 33-2-1104, 33-2-1105, and this section:

19 (a) the failure to file any statement, amendment, or other material required to be filed pursuant to  
 20 33-2-1104(1) through ~~(4)~~ (5);

21 (b) the effectuation or any attempt to effectuate an acquisition of control of, divestiture of, or merger with  
 22 a domestic insurer unless the commissioner has given approval.

23 (3) The courts of this state are vested with jurisdiction over every person not resident, domiciled, or  
 24 authorized to do business in this state who files a statement with the commissioner under 33-2-1104 and over  
 25 all actions involving the person arising out of violations of 33-2-1104, 33-2-1105, and this section, ~~and each.~~ Each  
 26 person is considered to have performed acts equivalent to and constituting an appointment ~~by the person~~ of the  
 27 commissioner to be the person's attorney upon whom may be served all lawful process in any action, suit, or  
 28 proceeding arising out of violations of this section. Copies of all lawful process must be served on the  
 29 commissioner and transmitted by certified mail by the commissioner to the person at the person's last-known  
 30 address."

1

2           **Section 27.** Section 33-2-1111, MCA, is amended to read:

3           **"33-2-1111. Registration of insurers -- requisites -- termination.** (1) (a) An insurer authorized to do  
4 business in this state that is a member of an insurance holding company system shall register with the  
5 commissioner, except that a foreign insurer subject to disclosure requirements and standards adopted by statute  
6 or regulation in the jurisdiction of its domicile that are substantially similar to those contained in this section is not  
7 required to register.

8           (b) Any insurer subject to registration under this section shall register within 15 days after becoming  
9 subject to registration, unless the commissioner for good cause extends the time for registration.

10           (c) The commissioner may require any authorized insurer that is a member of a holding company system  
11 that is not subject to registration under this section to furnish a copy of the registration statement or other  
12 information filed by the insurance company with the insurance regulatory authority in the jurisdiction where the  
13 company is domiciled.

14           (2) An insurer subject to registration shall file with the commissioner, on or before April 30 each year,  
15 a registration statement on a form provided by the commissioner that must contain current information about:

16           (a) the capital structure, general financial condition, ownership, and management of the insurer and any  
17 person controlling the insurer;

18           (b) the identity of every member of the insurance holding company system;

19           (c) existing relationships, transactions currently outstanding between the insurer and its affiliates, and  
20 the following agreements that are in force:

21           (i) loans, other investments, or purchases, sales, or exchanges of securities of the affiliates by the insurer  
22 or of the insurer by its affiliates;

23           (ii) purchases, sales, or exchanges of assets;

24           (iii) transactions not in the ordinary course of business;

25           (iv) guaranties or undertakings for the benefit of an affiliate that result in an actual contingent exposure  
26 of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's  
27 business;

28           (v) management and service contracts and cost-sharing arrangements;

29           (vi) reinsurance agreements covering all or substantially all of one or more lines of insurance of the  
30 ceding company;



- 1 (vii) dividends and other distributions to shareholders; and  
2 (viii) consolidated tax allocation agreements;
- 3 (d) a pledge of the insurer's stock, including stock of a subsidiary or controlling affiliate for a loan made  
4 to a member of the insurance holding company system;
- 5 (e) all matters concerning transactions between registered insurers and any affiliates as may be included  
6 from time to time in registration forms adopted or approved by the commissioner.
- 7 (3) A registration statement must contain a summary outlining each item in the current registration  
8 statement that represents a change from the prior registration statement.
- 9 (4) Information need not be disclosed on the registration statement filed pursuant to subsection (2) if the  
10 information is not material for the purposes of this section. Unless the commissioner by rule or order provides  
11 otherwise, sales, purchases, exchanges, loans or extensions of credit, or investments involving 1/2 of 1% or less  
12 of an insurer's admitted assets as of the prior December 31 are not material for purposes of this section.
- 13 (5) A person within an insurance holding company system subject to registration shall provide complete  
14 and accurate information to an insurer if the information is reasonably necessary to enable the insurer to comply  
15 with Title 33, chapter 2, part 11.
- 16 (6) Each registered insurer shall keep current the information required to be disclosed in its registration  
17 statement by reporting all material changes or additions on amendment forms provided by the commissioner  
18 within 15 days after the end of the month in which ~~it~~ the registered insurer learns of each change or addition.
- 19 (7) The ultimate controlling person of every insurer subject to registration under this section shall also  
20 file an annual enterprise risk report. The report must identify the material risks within the insurance holding  
21 company system that could pose enterprise risk to the insurer. The report must be filed with the insurance  
22 regulator in the state in which the insurance holding company system is domiciled, as determined by the  
23 procedures within the financial analysis handbook adopted by the NAIC.
- 24 ~~(7)(8)~~ (8) The commissioner shall terminate the registration of any insurer that demonstrates that ~~it~~ the  
25 insurer no longer is a member of an insurance holding company system.
- 26 ~~(8)(9)~~ (9) The commissioner may require or allow two or more affiliated insurers subject to registration under  
27 this section to file a consolidated registration statement or consolidated reports amending their consolidated  
28 registration statement or their individual registration statements.
- 29 ~~(9)(10)~~ (10) The commissioner may allow an insurer that is authorized to do business in this state and that  
30 is part of an insurance holding company system to register on behalf of any affiliated insurer which is required

1 to register under subsection (1) and to file all information and material required to be filed under this section."

2

3 **Section 28.** Section 33-2-1112, MCA, is amended to read:

4 **"33-2-1112. Exemptions -- disclaimer -- violations.** (1) The provisions of 33-2-1111 and this section  
5 ~~shall do not apply to any insurer, information, or transaction if and~~ to the extent that the commissioner by rule or  
6 order ~~shall exempt the same~~ has exempted that insurer, information, or transaction from the provisions of  
7 33-2-1111 and this section.

8 (2) (a) Any person may file with the commissioner a disclaimer of affiliation with any authorized insurer,  
9 or ~~such~~ a disclaimer may be filed by ~~such an~~ insurer or any member of an insurance holding company system.  
10 The disclaimer ~~shall~~ must fully disclose all material relationships and bases for affiliation between ~~such the~~ person  
11 and ~~such the~~ insurer that is the object of the disclaimer as well as the basis for disclaiming ~~such the~~ affiliation.  
12 ~~After a disclaimer has been filed, the insurer shall be relieved of any duty to register or report under 33-2-1111~~  
13 ~~and this section which may arise out of the insurer's relationship with such person unless and until the~~  
14 ~~commissioner disallows such a disclaimer. The commissioner shall disallow such a disclaimer only after~~  
15 ~~furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact~~  
16 ~~to support such disallowance:~~

17 (b) The commissioner shall approve or deny a disclaimer within 30 days of filing. If the commissioner  
18 denies a disclaimer under this section, the disclaiming party may request a hearing, which must be granted. The  
19 disclaiming party is not required to register under this section if the commissioner approves the disclaimer.

20 (3) The failure to file a registration statement, an enterprise risk report, or any amendment ~~thereto to the~~  
21 registration statement or enterprise risk request, as required by 33-2-1111 and this section, within the time  
22 specified for such filing shall be is a violation of 33-2-1111 and this section."

23

24 **Section 29.** Section 33-2-1113, MCA, is amended to read:

25 **"33-2-1113. Transactions with affiliates -- standards.** (1) Material transactions by registered insurers  
26 with their affiliates are subject to the following standards:

27 (a) The terms must be fair and reasonable.

28 (b) Charges or fees for services performed must be reasonable.

29 (c) Expenses incurred and payments received must be allocated to the insurer in conformity with  
30 customary insurance accounting practices consistently applied.

1 (d) The books, accounts, and records of each party must clearly and accurately disclose the precise  
 2 nature and details of the transactions, including any accounting information necessary to support the  
 3 reasonableness of the charges or fees to the respective parties.

4 (e) The insurer's surplus as regards policyholders following any dividends or distributions to shareholder  
 5 affiliates must be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

6 (2) (a) The following transactions involving a domestic insurer and a person in its holding company  
 7 system may not be entered into unless the insurer has notified the commissioner in writing of its intention to enter  
 8 into a transaction and the commissioner has not disapproved ~~it~~ the transaction within at least 30 days prior to the  
 9 transaction, or a shorter period as the commissioner may permit:

10 (i) sales, purchases, exchanges, loans or extensions of credit, guaranties, or investments if, as of the  
 11 prior December 31, the transactions are equal to or exceed:

12 (A) with respect to insurers other than life insurers, the lesser of 3% of the insurer's admitted assets or  
 13 25% of its surplus as regards policyholders; and

14 (B) with respect to life insurers, 3% of the insurer's admitted assets;

15 (ii) loans or extensions of credit to a person who is not an affiliate if the insurer makes the loans or  
 16 extensions of credit with the agreement or understanding that the proceeds of the transactions, in whole or in  
 17 substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make  
 18 investments in an affiliate of the insurer making the loans or extensions of credit if the transactions, as of the prior  
 19 December 31, are equal to or exceed:

20 (A) with respect to insurers other than life insurers, the lesser of 3% of the insurer's admitted assets or  
 21 25% of its surplus as regards policyholders;

22 (B) with respect to life insurers, 3% of the insurer's admitted assets;

23 (iii) any of the following arrangements ~~reinsurance agreements or modifications to reinsurance~~  
 24 ~~agreements~~ in which the projected reinsurance premium or a change in any of the next 3 years in the insurer's  
 25 liabilities equals or exceeds 5% of the insurer's surplus as regards policyholders, as of the prior December 31;  
 26 including:

27 (A) reinsurance pooling agreements;

28 (B) reinsurance agreements;

29 (C) reinsurance modification to reinsurance agreements; or

30 (D) those agreements that may require as consideration the transfer of assets from an insurer to a

1 nonaffiliate; if an agreement or understanding exists between the insurer and nonaffiliate that a portion of the  
2 assets will be transferred to one or more affiliates of the insurer;

3 (iv) all management agreements, service contracts, tax allocation agreements, guarantees, and  
4 cost-sharing arrangements; and

5 (v) any material transactions, specified by rule, that the commissioner determines may adversely affect  
6 the interests of the insurer's policyholders.

7 (b) Nothing in this subsection (2) is considered to authorize or permit a transaction that, in the case of  
8 an insurer that is not a member of the same holding company system, would otherwise be contrary to law.

9 (3) A domestic insurer may not enter into a transaction that is part of a plan or series of like transactions  
10 with a person within the holding company system if the purpose of those separate transactions is to avoid the  
11 statutory threshold amount review. If the commissioner determines that the separate transactions were entered  
12 into over a 12-month period for the purpose of evading review, the commissioner may exercise authority under  
13 33-2-1120.

14 (4) The commissioner, in reviewing a transaction pursuant to subsection (2), shall consider whether the  
15 transaction complies with the standards set forth in subsection (1) and whether ~~it~~ the transaction may adversely  
16 affect the interests of a policyholder.

17 (5) The commissioner must be notified within 30 days of an investment by a domestic insurer in a  
18 corporation if the total investment in the corporation by the insurance holding company system exceeds 10% of  
19 the corporation's voting securities.

20 (6) For purposes of this section, in determining whether an insurer's surplus as regards policyholders  
21 is reasonable in relation to the insurer's outstanding liabilities and adequate to ~~its~~ the insurer's financial needs,  
22 the following factors, among others, must be considered:

23 (a) the size of the insurer as measured by its assets, capital and surplus, reserves, premium writings,  
24 insurance in force, and other appropriate criteria;

25 (b) the extent to which the insurer's business is diversified among the several lines of insurance;

26 (c) the number and size of risks insured in each line of business;

27 (d) the extent of the geographical dispersion of the insurer's insured risks;

28 (e) the nature and extent of the insurer's reinsurance program;

29 (f) the quality, diversification, and liquidity of the insurer's investment portfolio;

30 (g) the recent past and projected future trend in the size of the insurer's surplus as regards policyholders;

- 1 (h) the surplus as regards policyholders maintained by other comparable insurers;
- 2 (i) the adequacy of the insurer's reserves;
- 3 (j) the quality and liquidity of investments in ~~subsidiaries~~ affiliates made pursuant to 33-2-1104 through
- 4 33-2-1106. The commissioner may treat any investment as a disallowed asset for purposes of determining the
- 5 adequacy of surplus as regards policyholders whenever in the commissioner's judgment the investment so
- 6 warrants."

7

8 **Section 30.** Section 33-2-1115, MCA, is amended to read:

9 **"33-2-1115. Examination.** (1) (a) In addition to the powers ~~which the commissioner has~~ under Title 33,

10 chapter 1, part 4, relating to the examination of insurers, the commissioner also has the power to order any

11 insurer registered under 33-2-1111 to produce the records, books, or other information papers in the possession

12 of the insurer or its affiliates ~~as~~ that the commissioner determines are necessary to ascertain the financial

13 condition or legality of conduct of the insurer.

14 (b) The information that the commissioner may request under subsection (1)(a) includes information

15 necessary to ascertain the enterprise risk to the insurer by the ultimate controlling party or by any entity or

16 combination of entities within the insurance holding company system or by the insurance holding company

17 system on a consolidated basis.

18 (c) If the insurer fails to comply with the order, the commissioner may examine the affiliates to obtain the

19 information.

20 (2) The commissioner may retain at the registered insurer's expense attorneys, actuaries, accountants,

21 and other experts not otherwise a part of the commissioner's staff ~~as are~~ that may be reasonably necessary to

22 assist in the conduct of the examination under subsection (1). Any persons retained are under the direction and

23 control of the commissioner and ~~shall~~ are retained to act in a purely advisory capacity.

24 (3) Each registered insurer producing for examination records, books, and papers pursuant to subsection

25 (1) is liable for and shall pay the expense of the examination."

26

27 **Section 31.** Section 33-2-1116, MCA, is amended to read:

28 **"33-2-1116. Confidentiality of information.** (1) All confidential criminal justice information, as defined

29 in 44-5-103, personal information protected by an individual privacy interest, and trade secrets, as defined in

30 30-14-402, specifically identified and for which there are reasonable grounds of privilege asserted by the party

1 claiming the privilege obtained by or disclosed to the commissioner or any other person in the course of an  
2 examination or investigation made pursuant to 33-2-1115 and all information reported pursuant to 33-2-1111 and  
3 33-2-1112 containing confidential criminal justice information, trade secrets, or personal information must be  
4 given confidential treatment, ~~may~~ are not ~~be~~ subject to subpoena, and may not be made public by the  
5 commissioner or any other person, except to insurance departments of other states, without the prior written  
6 consent of the insurer to which it the information in this subsection pertains unless the commissioner, after giving  
7 the insurer and its affiliates who would be affected notice and opportunity to be heard, determines that the  
8 interests of policyholders, shareholders, or the public will be served by the publication of the trade secrets or  
9 personal information, ~~in which event~~. If the commissioner decides that the interests of policyholders,  
10 shareholders, or the public will be served by the publication of the trade secrets or personal information, the  
11 commissioner may publish all or any part of the trade secrets or personal information in a manner that the  
12 commissioner considers appropriate.

13 (2) Neither the commissioner nor any person who receives confidential information while acting under  
14 the authority of the commissioner may be required or permitted to testify in any private civil action concerning the  
15 confidential information.

16 (3) Confidential information under this section may be released by the commissioner:

17 (a) with the written consent of the insurer;

18 (b) to other state, federal, and international regulatory agencies upon the agreement by the person to  
19 whom the information is to be released that the documents will remain confidential.

20 (4) The commissioner may enter into agreements governing sharing and use of confidential information  
21 consistent with subsection (3).

22 (5) (a) The commissioner shall enter into written agreements with the NAIC governing the sharing and  
23 use of information provided pursuant to [sections 10 through 16], 33-2-521 through 33-2-529, 33-2-531, 33-2-537,  
24 and this section.

25 (b) An agreement with the NAIC under this section must:

26 (i) specify procedures and protocols regarding the confidentiality and security of information shared with  
27 the NAIC and its affiliates and subsidiaries pursuant to [sections 10 through 16], 33-2-521 through 33-2-529,  
28 33-2-531, 33-2-537, and this section, including procedures and protocols for sharing by the NAIC with other state,  
29 federal, or international regulators;

30 (ii) specify that ownership information shared with the NAIC and its affiliates and subsidiaries pursuant

1 to [sections 10 through 16], 33-2-521 through 33-2-529, 33-2-531, 33-2-537, and this section remains with the  
 2 commissioner and that the NAIC's use of the information is subject to the direction of the commissioner;

3 (iii) require prompt notice to be given to an insurer whose confidential information in the possession of  
 4 the NAIC pursuant to [sections 10 through 16], 33-2-521 through 33-2-529, 33-2-531, 33-2-537, and this section  
 5 is subject to a request or a subpoena to the NAIC for disclosure or production; and

6 (iv) require the NAIC and its affiliates and subsidiaries to consent to intervention by an insurer in any  
 7 judicial or administrative action in which the NAIC and its affiliates may be required to disclose confidential  
 8 information about the insurer that has been shared with the NAIC and its affiliates pursuant to [sections 10  
 9 through 16], 33-2-521 through 33-2-529, 33-2-531, 33-2-537, and this section.

10 (6) Documents, materials, or other information in the possession or control of the NAIC pursuant to  
 11 [sections 10 through 16], 33-2-521 through 33-2-529, 33-2-531, 33-2-537, and this section are confidential and  
 12 privileged and are not subject to 2-6-102 or to subpoena or discovery. The information described in this  
 13 subsection is not admissible as evidence in any private civil action.

14 (7) Disclosure to the commissioner of information under this section or as a result of sharing of  
 15 confidential information authorized under subsections (4) and (5) does not constitute a waiver of any applicable  
 16 privilege or claim of confidentiality related to the information obtained under [sections 10 through 16], 33-2-521  
 17 through 33-2-529, 33-2-531, 33-2-537, and this section.

18 (8) A privilege established under the law of any state or jurisdiction that is substantially similar to the  
 19 privilege established under this section is recognized in this state and may be enforced in any proceeding in this  
 20 state, including in any court proceeding.

21 (9) As used in this section, the terms "regulatory agency" and "NAIC" include but are not limited to their  
 22 employees, agents, consultants, and contractors."

23

24 **Section 32.** Section 33-2-1120, MCA, is amended to read:

25 **"33-2-1120. Criminal or civil proceedings -- penalties.** (1) An insurer failing without just cause to file  
 26 a registration statement as required in 33-2-1111 shall, after notice and hearing, pay a penalty of \$100 for each  
 27 day of delinquency. The maximum penalty under this subsection is \$25,000. The commissioner may reduce the  
 28 penalty if the insurer demonstrates to the commissioner that the imposition of the penalty would constitute a  
 29 financial hardship to the insurer.

30 (2) A director or an officer of an insurance holding company system who knowingly violates, participates

1 in, or assents to a transaction or who knowingly permits an officer or insurance producer of the insurer to engage  
 2 in a transaction or make an investment that has not been properly reported or submitted pursuant to 33-2-1111  
 3 or 33-2-1113 or that violates any other provision of Title 33, chapter 2, part 11, shall, after notice and hearing, pay,  
 4 in the director's or officer's individual capacity, a fine of not more than \$5,000 for each violation. To determine the  
 5 amount of the fine, the commissioner shall consider the appropriateness of the fine with respect to the gravity of  
 6 the violation, the history of previous violations, and other matters that justice may require.

7 (3) If the commissioner determines that an insurer subject to Title 33, chapter 2, part 11, or a director,  
 8 officer, employee, or insurance producer of the insurer has engaged in a transaction or entered into a contract  
 9 that is subject to 33-2-1113 and that would not have been approved had approval been requested, the  
 10 commissioner may order the insurer to cease and desist immediately any further activity under that transaction  
 11 or contract. After notice and hearing, the commissioner may also order the insurer to void the contract and restore  
 12 the status quo if that action is in the best interest of policyholders, creditors, or the public.

13 (4) Whenever it ~~appears to~~ the commissioner determines that ~~any an~~ insurer or ~~any a~~ director, officer,  
 14 employee, or insurance producer of the insurer ~~has~~ may have committed a willful violation of this part, the  
 15 commissioner may cause criminal proceedings to be instituted by the district court for the county in which the  
 16 principal office of the insurer is located or if the insurer does not have an office in the state, then by the district  
 17 court for Lewis and Clark County against the insurer or the responsible director, officer, employee, or insurance  
 18 producer of the insurer.

19 (5) Withholding of information required under 33-2-1104, if lack of that information prevents a full  
 20 understanding of the enterprise risk to the insurer by affiliates or by the insurance holding company system, is  
 21 a violation of 33-2-1104 and may serve as an independent basis for:

22 (a) disapproving dividends or distributions; or

23 (b) placing the insurer under supervision as provided in 33-2-1321.

24 ~~(5)(6)~~ Any insurer that willfully violates this part may be fined not more than \$25,000.

25 ~~(6)(7)~~ Any individual who willfully violates this part may be fined not more than \$5,000 or, if the willful  
 26 violation involves the deliberate perpetration of a fraud upon the commissioner, imprisoned for not more than 2  
 27 years, or both."

28

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

30 "**33-2-1216. Credit allowed domestic ceding insurer.** (1) Credit for reinsurance is allowed to a



1 domestic ceding insurer as either an asset or a deduction from liability on account of reinsurance ceded only  
 2 when the reinsurer meets the requirements of subsection (2), (3), (4), (5), or (6). If the requirements of subsection  
 3 (4) or (5) are met, the requirements of subsection (7) must also be met.

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

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

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

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

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

14 (d) files annually with the commissioner a copy of its annual statement filed with the insurance  
 15 department of its state of domicile and a copy of its most recent audited financial statement; and ~~either:~~

16 ~~—— (i) maintains a surplus with regard to policyholders in an amount that is not less than \$20 million and  
 17 whose accreditation has not been denied by the commissioner within 90 days of its submission; or~~

18 ~~—— (ii) maintains a surplus with regard to policyholders in an amount less than \$20 million and whose  
 19 accreditation has been approved by the commissioner.~~

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

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

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

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

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

- 1 (ii) the assuming insurer or the United States branch of an alien assuming insurer:  
2 (A) maintains a surplus with regard to policyholders in an amount not less than \$20 million; and  
3 (B) submits to the authority of this state to examine its books and records.
- 4 (b) The requirement of subsection (4)(a)(i) does not apply to reinsurance ceded and assumed pursuant  
5 to pooling arrangements among insurers in the same holding company system.
- 6 (5) (a) Credit must be allowed when the reinsurance is ceded to an assuming insurer that maintains a  
7 trust fund in a qualified United States financial institution for the payment of the valid claims of its United States  
8 policyholders and ceding insurers and their assigns and successors in interest. The assuming insurer shall report  
9 annually to the commissioner information substantially the same as that required to be reported on the NAIC  
10 annual statement form by licensed insurers to enable the commissioner to determine the sufficiency of the trust  
11 fund.
- 12 (b) (i) In the case of a single assuming insurer, the trust must consist of a trustee account representing  
13 the assuming insurer's liabilities attributable to business written in the United States, and in addition, the assuming  
14 insurer shall maintain a surplus with the trustee of not less than \$20 million, except as provided in subsection  
15 (5)(b)(ii).
- 16 (ii) At any time after the assuming insurer has permanently discontinued underwriting new business  
17 secured by the trust for at least 3 full years, the insurance regulator with principal regulatory oversight of the trust  
18 may authorize a reduction in the required trustee surplus after a finding that the new required surplus level is  
19 adequate for the protection of United States ceding insurers, policyholders, and claimants in light of reasonably  
20 foreseeable adverse loss development. The risk assessment may involve an actuarial review, including an  
21 independent analysis of reserves and cash flows. The risk assessment must consider all material risk factors,  
22 including, when applicable, the lines of business involved, the stability of the incurred loss estimates, and the  
23 effect of the surplus requirements on the assuming insurer's liquidity or solvency. The minimum required trustee  
24 surplus may not be reduced to an amount less than 30% of the assuming insurer's liabilities attributable to  
25 reinsurance ceded by United States ceding insurers covered by the trust.
- 26 (iii) In the case of a group, including incorporated and individual unincorporated underwriters, the trust  
27 must consist of a trustee account representing the group's respective underwriters' liabilities attributable to  
28 business written in the United States, ~~and in addition,~~ to any underwriter of the group. Additionally, the group shall  
29 maintain a surplus with the trustee of which \$100 million must be held jointly for the benefit of United States  
30 ceding insurers of any member of the group.

1 (iii) The incorporated members of the group, as group members, may not be engaged in a business other  
2 than underwriting as members of the group and are subject to the same level of solvency regulation and control  
3 by the insurance regulator as the unincorporated members. The group shall make available to the commissioner  
4 an annual certification of the solvency of each underwriter by the insurance regulator and the independent public  
5 accountants in the jurisdiction where the underwriter is domiciled.

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

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

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

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

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

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

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

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

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

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

29 (d) No later than February 28 of each year, the trustees of the trust shall report to the commissioner in  
30 writing setting forth the balance of the trust and listing the trust's investments at the end of the preceding year.

1 The trustees shall certify the date of termination of the trust, if planned, or certify that the trust may not expire prior  
2 to the following December 31.

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

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

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

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

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

13 (D) appoint the commissioner as its agent for service of process in this state;

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

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

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

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

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

29 (B) provide to the commissioner, within 90 days of the date its financial statements are due to be filed  
30 with the association's domiciliary regulator, an annual certification by the association's domiciliary regulator of

1 the solvency of each underwriter member. If a certification is unavailable, the association may provide a financial  
2 statement prepared by independent public accountants of each underwriter member.

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

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

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

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

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

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

16 (vi) The commissioner may not approve a jurisdiction not in the United States if the commissioner  
17 determines that the jurisdiction does not adequately and promptly enforce final United States judgments and  
18 arbitration awards.

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

21 (viii) The commissioner shall assign a rating to each certified insurer. In assigning a rating, the  
22 commissioner shall consider the financial strength ratings assigned by agencies approved by the commissioner.  
23 The commissioner shall publish a list of all certified reinsurers and their ratings. The commissioner may defer to  
24 a rating assigned by a jurisdiction accredited by the NAIC.

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

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

30 (B) forms a multibeneficiary trust in accord with subsections (5)(a) through (5)(d), except that minimum

1 trusteed surplus requirements as provided in subsection (5)(b) do not apply with respect to a multibeneficiary trust  
 2 account maintained by a certified reinsurer for the purpose of securing obligations incurred under this subsection  
 3 (5)(e)(ix). A multibeneficiary trust under this subsection (5)(e)(ix)(B) must be maintained with a minimum trusteed  
 4 surplus of \$10 million.

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

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

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

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

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

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

29 (i) ~~that in the event of upon~~ the failure of the assuming insurer to perform its obligations under the terms  
 30 of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer, ~~will~~ shall:

1 (A) submit to the jurisdiction of any court of competent jurisdiction in any state of the United States;  
 2 (B) comply with all requirements necessary to give the court jurisdiction; and  
 3 (C) abide by the final decision of the court or of any appellate court in the event of an appeal; and  
 4 (ii) ~~to the assuming insurer shall~~ designate the commissioner or a designated attorney as its attorney  
 5 upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the  
 6 ceding ~~company~~ insurer.

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

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

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

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

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

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

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

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

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

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

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

3 (B) the voluntary surrender or termination of the reinsurer's eligibility to transact insurance or reinsurance

4 business in its domiciliary jurisdiction; or

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

6 (b) While a reinsurer's accreditation or certification is suspended, no reinsurance contract issued or

7 renewed after the effective date of the suspension qualifies for credit under this section except to the extent that

8 the reinsurer's obligations under the contract are secured in accordance with this section. If a reinsurer's

9 accreditation or certification is revoked, no credit for reinsurance may be granted after the effective date of the

10 revocation except to the extent that the reinsurer's obligations under the contract are secured in accordance with

11 33-2-1217 and subsection (5)(e)(ix) of this section.

12 (10) A reinsurance contract issued or renewed after the effective date of a suspension or revocation does

13 not qualify for credit except to the extent that the reinsurer's obligations under the contract are secured in

14 accordance with this section."

15

16 **Section 34.** Section 33-2-1217, MCA, is amended to read:

17 **"33-2-1217. Reduction of liability for reinsurance ceded by domestic insurer to assuming insurer**

18 **-- definition.** A reduction from liability for the reinsurance ceded by a domestic insurer to an assuming insurer

19 not meeting the requirements of 33-2-1216 must be allowed in an amount not exceeding the liabilities carried by

20 the ceding insurer. The reduction must be in the amount of funds held by or on behalf of the ceding insurer,

21 including funds held in trust for the ceding insurer:

22 (1) under a reinsurance contract with the assuming insurer as security for the payment of obligations

23 under the contract if the security is held in the United States subject to withdrawal solely by and under the

24 exclusive control of the ceding insurer; or

25 (2) in the case of a trust, in a qualified United States financial institution. This security may be in the form

26 of:

27 (a) cash;

28 (b) securities listed by the securities valuation office of the NAIC, including those exempt from filing as

29 defined in the purposes and procedures manual of the securities valuation office, and qualifying as admitted

30 assets;



1 (c) clean, irrevocable, unconditional letters of credit that are issued or confirmed by a qualified United  
2 States financial institution no later than December 31 of the year for which filing is being made and that are in the  
3 possession of the ceding ~~company~~ insurer on or before the filing date of its the insurer's annual statement. Letters  
4 of credit meeting applicable standards of issuer acceptability as of the dates of their issuance or confirmation  
5 must, notwithstanding the issuing or confirming institution's subsequent failure to meet applicable standards of  
6 issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification,  
7 or amendment, whichever occurs first.

8 (d) any other form of security acceptable to the commissioner.

9 (3) For the purposes of subsection (2)(c), a "qualified United States financial institution" means an  
10 institution that:

11 (a) is organized or, in the case of a United States office of a foreign banking organization, licensed under  
12 the laws of the United States or any of its states;

13 (b) is regulated, supervised, and examined by United States federal or state authorities with regulatory  
14 authority over banks and trust companies; and

15 (c) has been determined by either the commissioner or the securities valuation office of the national  
16 association of insurance commissioners to meet the standards of financial condition and standing that are  
17 considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will  
18 be acceptable to the commissioner.

19 (4) For the purposes of this part, except for subsection (2)(c), "qualified United States financial institution"  
20 means, with respect to institutions eligible to act as a fiduciary of a trust, an institution that:

21 (a) is organized or, in the case of a United States branch or agency office of a foreign banking  
22 corporation, licensed under the laws of the United States or any of its states and that has been granted authority  
23 to operate with fiduciary powers; and

24 (b) is regulated, supervised, and examined by federal or state authorities having regulatory authority over  
25 banks and trust companies.

26 (5) The commissioner may adopt rules implementing the provisions of 33-2-307, 33-2-708, and chapter  
27 12."

28

29 **Section 35.** Section 33-2-1501, MCA, is amended to read:

30 **"33-2-1501. Definitions.** As used in parts 15 through 17 of this chapter, the following definitions apply:

1 (1) "Accredited state" means a state in which the department of insurance or regulatory agency has  
 2 qualified as meeting the minimum financial regulatory standards promulgated and established from time to time  
 3 by the national association of insurance commissioners.

4 (2) "Actuary" means a person who is a member in good standing of the American academy of actuaries.

5 (3) "Captive insurer" means:

6 (a) an insurer that is owned by another entity and whose exclusive purpose is to insure risks of the  
 7 parent entity and its affiliates; or

8 (b) in the case of a group or association, an insurer that is owned by the member insureds and whose  
 9 exclusive purpose is to insure risks to member insureds and their affiliates.

10 (4) "Control" or "controlled" has the meaning defined in 33-2-1101.

11 (5) "Controlled insurer" means an authorized insurer that is controlled, directly or indirectly, by a  
 12 producer.

13 (6) "Controlling person" means a person, firm, association, or corporation that has the power to direct  
 14 or cause to be directed the management, control, or activities of a reinsurance intermediary.

15 (7) "Controlling producer" means a producer who, directly or indirectly, controls an insurer.

16 (8) (a) "Insurer" means any person, firm, association, or corporation authorized, under Title 33, chapter  
 17 2, part 1, to transact insurance business in this state.

18 (b) ~~With regard to part 15 only, the following are not insurers~~ The term does not mean:

19 (i) ~~risk retention groups as defined in:~~

20 ~~—— (A) the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613~~  
 21 ~~(1986);~~

22 ~~—— (B) the Liability Risk Retention Act of 1986, 15 U.S.C. 3901, et seq.; or~~

23 ~~—— (C) Title 33, chapter 11, part 1;~~

24 ~~(ii)(i) residual market pools and joint underwriting authorities or associations; or~~

25 ~~(iii)(ii) captive insurers, other than captive risk retention groups as defined in 33-28-101.~~

26 (c) ~~With regard to parts 16 and 17, captive insurers are not insurers but captive risk retention groups are~~  
 27 ~~insurers:~~

28 (9) "Licensed producer" means a producer or reinsurance intermediary licensed pursuant to this title.

29 (10) (a) "Managing general agent" means a person who:

30 (i) manages all or part of the insurance business of an insurer and acts as an agent for the insurer;

- 1 (ii) either separately or together with affiliates, produces, directly or indirectly, and underwrites an amount  
2 of gross written premiums equal to or more than 5% of the policyholder surplus in any quarter or year; and  
3 (iii) engages in one or more of the following activities on the business produced:  
4 (A) adjustment or payment of claims in excess of an amount determined by the commissioner; or  
5 (B) negotiation of reinsurance on behalf of the insurer.
- 6 (b) ~~Notwithstanding the provisions of subsection (10)(a), the following persons are not considered~~  
7 ~~managing general agents~~ The term does not include:
- 8 (i) an employee of the insurer;  
9 (ii) a manager of the United States branch of an alien insurer;  
10 (iii) an underwriting manager who, pursuant to contract, manages all or part of the insurance operations  
11 of the insurer, is under common control with the insurer, is subject to Title 33, chapter 2, part 11, and whose  
12 compensation is not based solely on the value of premiums written;  
13 (iv) the attorney-in-fact authorized by and acting for the subscribers of a reciprocal insurer or an  
14 interinsurance exchange under powers of attorney;  
15 (v) a person managing the property and liability business of a resident domestic farm mutual insurer who  
16 has been granted a managing general agent waiver under 33-4-320; or  
17 (vi) a director of a resident domestic farm mutual insurer who adjusts claims and participates in the  
18 underwriting process.
- 19 (11) "NAIC" means the national association of insurance commissioners.  
20 (12) "Producer" means an insurance producer or reinsurance intermediary authorized or licensed  
21 pursuant to this title.
- 22 (13) (a) "Qualified United States financial institution" means a financial institution that:  
23 (i) is organized or licensed under the laws of the United States or any state;  
24 (ii) is regulated, supervised, and examined by federal or state authorities having regulatory authority over  
25 banks and trust companies and that either:  
26 (A) is determined by the commissioner to meet the standards of financial condition and standing  
27 considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit are  
28 acceptable to the commissioner; or  
29 (B) is eligible to act as a fiduciary of a trust or has been granted authority to operate with fiduciary  
30 powers.

1 (b) For purposes of this definition, the commissioner may by rule adopt standards of financial condition  
2 and standing that may be developed from time to time by the securities valuation office of the NAIC.

3 (14) "Reinsurance intermediary" means a reinsurance intermediary-broker or a reinsurance  
4 intermediary-manager.

5 (15) "Reinsurance intermediary-broker" means a person, other than an officer or employee of the ceding  
6 insurer, who solicits, negotiates, or places reinsurance cessions or retrocessions on behalf of a ceding insurer  
7 without the authority or power to bind reinsurance on behalf of the insurer.

8 (16) (a) "Reinsurance intermediary-manager" means a person who:

9 (i) has authority to bind or who manages all or part of the assumed reinsurance business of a reinsurer,  
10 including the management of a separate division, department, or underwriting office; and

11 (ii) acts as an agent for the reinsurer, whether known as a reinsurance intermediary-manager, manager,  
12 or other similar term.

13 (b) The following persons are not considered reinsurance intermediary-managers with respect to the  
14 reinsurer:

15 (i) an employee of the reinsurer;

16 (ii) a manager of the United States branch of an alien reinsurer;

17 (iii) an underwriting manager who, pursuant to contract, manages all of the reinsurance operations of the  
18 reinsurer, is under common control with the reinsurer, is subject to Title 33, chapter 2, part 11, and whose  
19 compensation is not based on the volume of premiums written; or

20 (iv) a person who manages groups, associations, pools, or organizations of insurers that engage in joint  
21 underwriting or joint reinsurance and that are subject to examination by the insurance commissioner of the state  
22 in which the manager's principal business office is located.

23 (17) "Reinsurer" means a person, firm, association, or corporation licensed in this state under this title  
24 as an insurer with authority to assume reinsurance.

25 (18) "Underwrite" means the authority to accept or reject risk on behalf of the insurer."  
26

27 **Section 36.** Section 33-11-103, MCA, is amended to read:

28 **"33-11-103. Chartering -- licensing -- plan of operation.** (1) A risk retention group seeking to be  
29 chartered in this state must be chartered and licensed to write only casualty insurance pursuant to the insurance  
30 laws of this state and, except as provided in this part, shall comply with all of the laws, rules, regulations, and

1 requirements applicable to the insurers chartered and authorized in this state, including 33-11-104, to the extent  
2 that the requirements are not a limitation on laws, rules, regulations, or requirements of this state. Before it may  
3 ~~offer~~ offering insurance in any state, the risk retention group shall also submit for approval to the commissioner  
4 a plan of operation or a feasibility study and revisions of the plan or study if the group intends to offer any  
5 additional lines of liability insurance.

6 (2) At the time of filing its application for charter, the risk retention group shall provide to the  
7 commissioner in summary form the following information:

8 (a) the identity of the initial members of the risk retention group;

9 (b) the identity of those individuals who organized the risk retention group or who will provide  
10 administrative services or otherwise influence or control the activities of the risk retention group;

11 (c) the amount and nature of initial capitalization;

12 (d) the coverages to be afforded; and

13 (e) the states in which the risk retention group intends to operate.

14 (3) Upon receipt of the information required under subsection (2), the commissioner shall forward the  
15 information to the national association of insurance commissioners. Providing this information to the national  
16 association of insurance commissioners does not satisfy the requirements of 33-11-104 or any other section of  
17 this chapter.

18 (4) All risk retention groups chartered in this state shall file with the department and the national  
19 association of insurance commissioners an annual statement in a form prescribed by the national association of  
20 insurance commissioners ~~and in diskette form,~~ including electronically if required by the commissioner, and  
21 completed in accordance with ~~its~~ instructions provided by the national association of insurance commissioners  
22 and the national association of insurance commissioners' accounting practices and procedures manual.

23 (5) All risk retention groups must be in compliance with the governance standards contained within this  
24 section within 1 year of [the effective date of this act]. New risk retention groups must be in compliance with the  
25 standards at the time of licensure.

26 (6) (a) The board of directors of the risk retention group must consist of a majority of independent  
27 directors. If the risk retention group is reciprocal, the attorney-in-fact shall adhere to the same standards regarding  
28 independence of operation and governance as are imposed on the risk retention group's board of directors under  
29 these standards. The board of directors shall affirmatively determine that a director has no material relationship  
30 with the risk retention group for that director to be considered independent.

1 (b) Each risk retention group shall disclose the determinations of independence to the commissioner  
2 annually.

3 (c) (i) For the purpose of determining independence under this subsection (6), any person that is a direct  
4 or indirect owner of or a subscriber in the risk retention group or is an officer, director, or employee of the owner  
5 and insured, unless meeting the material relationship provisions under subsection (6)(c)(ii), is considered to be  
6 independent.

7 (ii) A person described in subsection (6)(c)(i) is not considered independent and has a material  
8 relationship of its members, as described in 15 U.S.C. 3901(a)(4)(E)(ii), if the person, a member of the person's  
9 immediate family, or any business with which the person is affiliated:

10 (A) has received in any 12-month period from the risk retention group, including a consultant or a service  
11 provider to the risk retention group, compensation or payment of any item of value that accounts for either 5%  
12 of the risk retention group's gross written premium for that 12-month period or 2% of the risk retention group's  
13 surplus, whichever is greater;

14 (B) has a relationship of employment or affiliation in a professional capacity or has had a relationship  
15 of employment or affiliation within 1 year with a present or former internal or external auditor of the risk retention  
16 group; or

17 (C) has a relationship or has had a relationship within 1 year with a related entity by which a director or  
18 an immediate family member of the director is employed as an executive officer. This condition includes any of  
19 the risk retention group's present executives serving on the related company's board of directors.

20 (7) (a) A material service provider contract with a risk retention group or its renewal:

21 (i) may not exceed 5 years;

22 (ii) requires the approval of a majority of the risk retention group's independent directors; and

23 (iii) is considered material if the amount to be paid for the contract is greater than or equal to 5% of the  
24 risk retention group's annual gross written premium or 2% of the risk retention group's surplus, whichever is  
25 greater.

26 (b) The entire board of directors may terminate any service provider contract at any time for cause after  
27 providing adequate notice as defined in the contract.

28 (c) The board may not enter a service provider contract with a person who has a material relationship  
29 with the risk retention group as provided in subsection (6)(c)(ii) unless the board has notified the commissioner  
30 at least 30 days prior to entering the contract and the commissioner has not disapproved the contract.

- 1           (8) The risk retention group's board of directors shall adopt in the plan of operation a written policy that  
2 requires the board to:
- 3           (a) ensure that all owners or insureds of the risk retention group receive evidence of ownership interest;  
4           (b) develop a set of governance standards applicable to the risk retention group;  
5           (c) oversee the evaluation of the risk retention group's management, including but not limited to the  
6 performance of the captive manager, managing general underwriter, or any other party that is responsible for  
7 underwriting, determination of rates, collection of premium, adjusting or settling claims, or the preparation of  
8 financial statements;
- 9           (d) review and approve the amount to be paid for all material service providers; and  
10           (e) review and approve at least annually:
- 11           (i) the risk retention group's goals and objectives relevant to the compensation of officers and service  
12 providers;
- 13           (ii) the officers' and service providers' performance in light of those goals and objectives; and  
14           (iii) the continued engagement of the officers and material service providers.
- 15           (9) (a) Except as provided in subsection (9)(b), the risk retention group shall name an audit committee  
16 composed of at least three independent board members as defined in subsection (6)(c)(i). A nonindependent  
17 board member may participate in the activities of the audit committee but may not be a member of the audit  
18 committee.
- 19           (b) The entire board of directors shall serve as the audit committee if the board chooses not to designate  
20 a separate audit committee.
- 21           (10) An audit committee shall approve a written charter that defines the committee's purpose, which at  
22 a minimum must be to:
- 23           (a) assist board oversight of:
- 24           (i) the integrity of the financial statements;  
25           (ii) the board's compliance with legal and regulatory requirements; and  
26           (iii) the qualifications, independence, and performance of the independent auditor and actuary;  
27           (b) discuss the annual audited financial statements and quarterly financial statements with management;  
28           (c) discuss the annual audited financial statement with its independent auditor and, if advisable, discuss  
29 its quarterly financial statements with its independent auditor;  
30           (d) discuss policies with respect to risk assessment and risk management;

1 (e) meet separately and periodically, either directly or through a designated representative of the  
2 committee, with management and independent auditors;

3 (f) review with the independent auditor any audit problems or difficulties and management's response;

4 (g) set clear hiring policies of the risk retention group as to the hiring of employees or former employees  
5 of the independent auditor;

6 (h) require the external auditor to rotate the lead or coordinating audit partner having primary  
7 responsibility for the risk retention group's audit as well as the audit partner responsible for reviewing the audit  
8 so that neither individual performs audit services for more than 5 consecutive fiscal years; and

9 (i) report regularly to the board of directors.

10 (11) (a) The board of directors shall adopt and disclose standards that make information available through  
11 electronic or other means and shall provide that information upon request.

12 (b) For the purposes of this subsection (11), the information must include:

13 (i) the process by which the directors are elected by the owner or the insureds;

14 (ii) qualification standards, responsibilities, and compensation for directors;

15 (iii) director access to management and, as necessary and appropriate, to independent advisors;

16 (iv) director orientation and continuing education;

17 (v) management succession policies and procedures; and

18 (vi) annual board performance evaluation policies and procedures.

19 (12) (a) The board of directors shall adopt and disclose a code of business conduct and ethics for  
20 directors, officers, and employees. Any waivers of this code as the code applies to directors and officers must  
21 be voted on by a majority of the independent directors.

22 (b) The code must address:

23 (i) conflicts of interest, including conflicts provided for in 35-1-461(1)(b)(i);

24 (ii) confidentiality;

25 (iii) fair dealing;

26 (iv) protection and proper use of risk retention group assets;

27 (v) compliance with all applicable laws, rules, and regulations; and

28 (vi) requirements for the reporting of any illegal or unethical behavior that affects the operation of the risk  
29 retention group.

30 (13) The captive manager, president, or chief executive officer of the risk retention group shall promptly



1 notify the commissioners in writing as soon as that person is aware of any material noncompliance with any  
 2 standard provided for in this section."

3

4 **Section 37.** Section 33-20-203, MCA, is amended to read:

5 **"33-20-203. Cash surrender value -- paid-up nonforfeiture benefit -- life.** (1) Except as provided in  
 6 subsection (2), any cash surrender value available under the policy in the event of default in the premium  
 7 payment due on any policy anniversary, whether or not required by 33-20-202, ~~shall be~~ is an amount not less than  
 8 the excess, if any, of the present value on ~~such the~~ the anniversary of the future guaranteed benefits ~~which that~~ would  
 9 have been provided for by the policy, including any existing paid-up additions, if there had been no default, over  
 10 the sum of:

11 (a) the then present value of the adjusted premiums as defined in 33-20-204 through 33-20-208  
 12 corresponding to premiums ~~which that~~ would have fallen due on and after ~~such the~~ the anniversary; and

13 (b) the amount of any indebtedness to the insurer on account of or secured by the policy.

14 (2) For any policy issued on or after the relevant operative date of 33-20-208 that provides supplemental  
 15 life insurance or annuity benefits at the option of the insured and for an identifiable additional premium by rider  
 16 or supplemental policy provision, the cash surrender value referred to in subsection (1) is an amount not less than  
 17 the sum of the cash surrender value as defined in subsection (1) for an otherwise similar policy issued at the  
 18 same age without ~~such a~~ a rider or a supplemental policy provision and the cash surrender value as defined in  
 19 subsection (1) for a policy that provides only the benefits otherwise provided by ~~such the~~ the rider or the supplemental  
 20 policy provision.

21 (3) Any cash surrender value available within 30 days after any policy anniversary under any policy paid  
 22 up by completion of all premium payments or any policy continued under any paid-up nonforfeiture benefits,  
 23 whether or not required by 33-20-202, ~~shall be~~ is an amount not less than the present value, on ~~such the~~ the  
 24 anniversary, of the future guaranteed benefits provided for by the policy, including any existing paid-up additions,  
 25 decreased by any indebtedness to the insurer on account of or secured by the policy.

26 (4) Any paid-up nonforfeiture benefit available under the policy in the event of default in the premium  
 27 payment due on any policy anniversary ~~shall be such that~~ is its present value as of ~~such the~~ the anniversary ~~shall~~  
 28 ~~be to the extent that the nonforfeiture benefit is~~ at least equal to the cash surrender value then provided for by  
 29 the policy or, if none is provided for, that cash surrender value ~~which that~~ would have been required by this part  
 30 in the absence of the conditions that premiums ~~shall~~ must have been paid for at least a specified period.

1 (5) For any family policy issued on or after the relevant operative date of 33-20-208 that defines a  
 2 primary insured and provides term insurance on the life of the spouse of the primary insured expiring before the  
 3 spouse reaches 71 years of age, the cash surrender value referred to in subsection (1) is an amount not less than  
 4 the sum of the cash surrender value as defined in subsection (1) for an otherwise similar policy issued at the  
 5 same age without ~~such the~~ term insurance on the life of the spouse and the cash surrender value as defined in  
 6 subsection (1) for a policy that provides only the benefits otherwise provided by ~~such the~~ term insurance on the  
 7 life of the spouse."

8

9 **Section 38.** Section 33-20-208, MCA, is amended to read:

10 **"33-20-208. Mortality tables -- interest rate adjusted premiums.** (1) (a) This section applies to all  
 11 policies issued on or after the operative date of this section. Except as provided in subsection (7), the adjusted  
 12 premiums for any policy are calculated on an annual basis and must be ~~such~~ a uniform percentage of the  
 13 respective premiums specified in the policy for each policy year, excluding amounts payable as extra premiums  
 14 to cover impairments, special hazards, and any uniform annual contract charge or policy fee specified in the  
 15 policy in a statement of the method to be used in calculating the cash surrender values and paid-up nonforfeiture  
 16 benefits, ~~that~~. The uniform percentage must represent the present value, at the date of issue of the policy, of all  
 17 adjusted premiums that is equal to the sum of:

- 18 (i) the then present value of the future guaranteed benefits provided for by the policy;  
 19 (ii) 1% of either the amount of insurance, if the insurance is uniform in amount, or the average amount  
 20 of insurance at the beginning of each of the first 10 policy years; and  
 21 (iii) 125% of the nonforfeiture net level premium as provided in subsection (2). ~~No A~~ nonforfeiture net level  
 22 premium is considered not to exceed 4% of either the amount of insurance, if the insurance is uniform in amount,  
 23 or the average amount of insurance at the beginning of each of the first 10 policy years.

24 (b) The date of issue of a policy for the purpose of this subsection is the date as of which the rated age  
 25 of the insured is determined.

26 (2) The nonforfeiture net level premium is equal to the present value, at the date of issue of the policy,  
 27 of the guaranteed benefits provided for by the policy divided by the present value, at the date of issue of the  
 28 policy, of an annuity of one per annum payable on the date of issue of the policy and on each anniversary of ~~such~~  
 29 that policy on which a premium falls due.

30 (3) For policies that have on a basis guaranteed in the policy unscheduled changes in benefits or

1 premiums or that provide an option for changes in benefits or premiums other than a change to a new policy, the  
2 adjusted premiums and present values are initially calculated on the assumption that future benefits and  
3 premiums do not change from those stipulated at the date of issue of the policy. At the time of any ~~such~~ change  
4 in the benefits or premiums, the future adjusted premiums, nonforfeiture net level premiums, and present values  
5 must be recalculated on the assumption that future benefits and premiums do not change from those stipulated  
6 by the policy immediately after the change.

7 (4) Except as otherwise provided in subsection (7), the recalculated future adjusted premiums for any  
8 ~~such policy shall be such~~ are a uniform percentage of the respective future premiums specified in the policy for  
9 each policy year, excluding amounts payable as extra premiums to cover impairments, special hazards, and any  
10 uniform annual contract charge or policy fee specified in the policy in a statement of the method to be used in  
11 calculating the cash surrender values and paid-up nonforfeiture benefits, ~~that~~. The uniform percentage must be  
12 the present value, at the time of change to the newly defined benefits or premiums, of all ~~such~~ future adjusted  
13 premiums ~~shall be~~ that is equal to the excess of:

14 (a) the sum of:

15 (i) the then present value of the then future guaranteed benefits provided for by the policy; and

16 (ii) the additional expense allowance, if any; over

17 (b) the then cash surrender value, if any, or present value of any paid-up nonforfeiture benefit under the  
18 policy.

19 (5) The additional expense allowance, at the time of the change to the newly defined benefits or  
20 premiums, is the sum of:

21 (a) 1% of the excess, if positive, of the average amount of insurance at the beginning of each of the first  
22 10 policy years subsequent to the change, over the average amount of insurance prior to the change at the  
23 beginning of each of the first 10 policy years subsequent to the time of the most recent previous change or, if  
24 there has been no previous change, the date of issue of the policy; and

25 (b) 125% of the increase, if positive, in the nonforfeiture net level premium.

26 (6) The recalculated nonforfeiture net level premium is equal to the result obtained by dividing the  
27 product of subsection (a) by the product of subsection (b):

28 (a) (i) the nonforfeiture net level premium applicable prior to the change multiplied by the present value  
29 of an annuity of one per annum payable on each anniversary of the policy on or subsequent to the date of the  
30 change on which a premium would have fallen due had the change not occurred; and

- 1 (ii) the present value of the increase in future guaranteed benefits provided for by the policy;
- 2 (b) the present value of an annuity of one per annum payable on each anniversary of the policy on or  
3 subsequent to the date of change on which a premium falls due.
- 4 (7) ~~Notwithstanding any other~~ Adjusted premiums and present values for a substandard policy may be  
5 calculated as if the substandard policy were issued to provide higher uniform amounts of insurance on the  
6 standard basis, regardless of other provisions of this section for a policy issued on a substandard basis that  
7 provides reduced graded amounts of insurance so that, in each policy year, ~~such the~~ policy has the same tabular  
8 mortality cost as an otherwise similar policy issued on the standard basis that provides higher uniform amounts  
9 of insurance; ~~adjusted premiums and present values for such substandard policy may be calculated as if it were~~  
10 ~~issued to provide such higher uniform amounts of insurance on the standard basis.~~
- 11 (8) Except as provided below, all adjusted premiums and present values referred to in this part are for  
12 policies of ordinary insurance calculated on the basis of the commissioner's 1980 standard ordinary mortality  
13 table or, at the election of the insurer for any one or more specified plans of life insurance, the commissioner's  
14 1980 standard ordinary mortality table with 10-year select mortality factors. All adjusted premiums and present  
15 values for policies of industrial insurance are calculated on the basis of the commissioner's 1961 standard  
16 industrial mortality table. All adjusted premiums and present values for all policies issued in a particular calendar  
17 year are calculated on the basis of a rate of interest not exceeding the nonforfeiture interest rate as provided in  
18 this subsection for policies issued in that calendar year; with the following exceptions and conditions:
- 19 (a) At the option of the insurer, calculations for all policies issued in a particular calendar year may be  
20 made on the basis of a rate of interest not exceeding the nonforfeiture interest rate, as provided in this subsection  
21 for policies issued in the immediately preceding calendar year.
- 22 (b) Under any paid-up nonforfeiture benefit, including any paid-up dividend additions, any cash surrender  
23 value available, whether or not required by 33-20-202, is calculated on the basis of the mortality table and rate  
24 of interest used in determining the amount of ~~such the~~ paid-up nonforfeiture benefit and paid-up dividend  
25 additions, if any.
- 26 (c) An insurer may calculate the amount of any guaranteed paid-up nonforfeiture benefit, including any  
27 paid-up additions under the policy, on the basis of an interest rate no lower than that specified in the policy for  
28 calculating cash surrender values.
- 29 (d) In calculating the present value of any paid-up term insurance with accompanying pure endowment,  
30 if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in

1 the commissioner's 1980 extended term insurance table for policies of ordinary insurance and not more than the  
2 commissioner's 1961 industrial extended term insurance table for policies of industrial insurance.

3 (e) For insurance issued on a substandard basis, the calculation of any ~~such~~ adjusted premiums and  
4 present values may be based on appropriate modifications of the tables set forth in this subsection (8).

5 (f) (i) Any For policies issued prior to the operative date of the valuation manual as provided in 33-2-523,  
6 any commissioner's standard ordinary mortality tables adopted after 1980 by the national association of insurance  
7 commissioners that are approved by the commissioner by rule for use in determining the minimum nonforfeiture  
8 standard may be substituted for the commissioner's 1980 standard ordinary mortality table with or without 10-year  
9 select mortality factors or for the commissioner's 1980 extended term insurance table.

10 (ii) For policies issued on or after the operative date of the valuation manual as provided in 33-2-523, the  
11 commissioner may use the standard mortality table provided in the valuation manual for use in determining the  
12 minimum nonforfeiture standard instead of using either the commissioner's 1980 standard ordinary mortality table  
13 with or without 10-year select mortality factors or the commissioner's 1980 extended term insurance table.

14 (iii) A minimum nonforfeiture standard, if adopted by the commissioner by rule for the commissioner's  
15 standard mortality table adopted by the national association of insurance commissioners for use in determining  
16 the minimum nonforfeiture standard for policies issued on or after the operative date of the valuation manual,  
17 supersedes the valuation manual's nonforfeiture standard.

18 (g) (i) Any For policies issued prior to the operative date of the valuation manual, any industrial mortality  
19 tables adopted after 1980 by the national association of insurance commissioners that are approved by the  
20 commissioner by rule for use in determining the minimum nonforfeiture standard may be substituted for the  
21 commissioner's 1961 standard industrial mortality table or the commissioner's 1961 industrial extended term  
22 insurance table.

23 (ii) For policies issued on or after the operative date of the valuation manual, the valuation manual must  
24 provide the commissioner's standard mortality table for use in determining the minimum nonforfeiture standard  
25 that may be substituted for the commissioner's 1961 standard industrial mortality table or the commissioner's  
26 1961 industrial extended term insurance table.

27 (iii) A minimum nonforfeiture standard, if adopted by the commissioner by rule for the commissioner's  
28 standard industrial mortality table adopted by the national association of insurance commissioners for use in  
29 determining the minimum nonforfeiture standard for policies issued on or after the operative date of the valuation  
30 manual, supersedes the valuation manual's nonforfeiture standard.

1           (9) ~~(a) The~~ For policies issued prior to the operative date of the valuation manual, the annual nonforfeiture  
 2 interest rate ~~per annum~~ for any policy issued in a particular calendar year must be equal to 125% of the calendar  
 3 year statutory valuation interest rate for such policy as defined in the standard valuation law, Title 33, chapter 2,  
 4 part 5, rounded to the nearer 1/4 of 1%. However, the nonforfeiture interest rate provided for in this subsection  
 5 (9)(a) may not be less than 4.00%.

6           **(b)** For policies issued on or after the operative date of the valuation manual, the annual nonforfeiture  
 7 interest rate for any policy issued in a particular calendar year must be as provided in the valuation manual.

8           (10) ~~Notwithstanding any other provision in this code to the contrary, any~~ Any refiling of nonforfeiture  
 9 values or their methods of computation for any previously approved policy form that involves only a change in  
 10 the interest rate or mortality table used to compute nonforfeiture values does not require refiling of any other  
 11 provisions of that policy form.

12           (11) After October 1, 1983, any insurer may file with the commissioner a written notice of its election to  
 13 comply with the provisions of this section after a specified date, before January 1, 1989, which is the operative  
 14 date of this section for ~~such~~ that insurer. If an insurer makes no ~~such~~ election, the operative date of this section  
 15 for ~~such~~ the insurer is January 1, 1989."

16  
 17           **Section 39.** Section 33-31-204, MCA, is amended to read:

18           **"33-31-204. Acquisition, control, or merger of a health maintenance organization.** (1) Except as  
 19 provided in 33-2-1106 and subsection (2) of this section, ~~no~~ a person may not tender for, request, or invite  
 20 tenders of, or enter into an agreement to exchange securities for or acquire in the open market or otherwise, any  
 21 voting security of a health maintenance organization or enter into any other agreement if, after the consummation  
 22 ~~thereof~~ of the agreement, that person would, directly or indirectly, or by conversion or by exercise of any right to  
 23 acquire, be in control of the health maintenance organization.

24           (2) ~~No~~ A person may not enter into an agreement to merge or consolidate with or otherwise to acquire  
 25 control of a health maintenance organization, unless, at the time any offer, request, or invitation is made or any  
 26 agreement is entered into, or prior to the acquisition of the securities if no offer or agreement is involved, the  
 27 acquiring person has filed with the commissioner and has sent to the health maintenance organization information  
 28 required by ~~33-2-1104(2)~~ 33-2-1104 and the commissioner has approved the offer, request, invitation, agreement,  
 29 or acquisition pursuant to 33-2-1105."

30

