

**** Bill No. ****

Introduced By *****

By Request of the *****

A Bill for an Act entitled: "An Act establishing a K-12 statewide health insurance program; and providing an immediate effective date."

Be it enacted by the Legislature of the State of Montana:

NEW SECTION. **Section 1. Purpose.** The purpose of [sections 1 through 7] is to:

(1) create a statewide health insurance program for K-12 public schools and educational cooperatives in which employers elect participation in the program and provide employees who are regularly employed for 30 or more hours a week during the school year or employed for fewer hours as specified in a collective bargaining agreement or by employer policy in a nonbargaining school district or education cooperative with access to core benefits consisting of group hospitalization, health, medical, surgical, and pharmaceutical insurance benefits made available on a statewide basis;

(2) provide a \$200 incentive credit each month for every eligible employee to be used as a credit against the premium charged by the K-12 SHIP for enrollment by the employee in a health benefit plan;

(3) offer vision, dental, disability, life insurance, and

other related group benefits for members and their dependents through the K-12 SHIP in an efficient and cost effective manner, at the employer's and member's election as specified in a collective bargaining agreement or by employer policy in a nonbargaining school district;

(4) mitigate and eliminate previously experienced erratic annual health care insurance premium increases for members and employers in the K-12 SHIP by spreading health care cost experience over a larger and more stable statewide public school risk group, while reducing administrative expenses associated with small health insurance groups;

(5) provide members of the K-12 SHIP with access to health insurance coverage and provide equitable access to affordable health care;

(6) effectively allow employers and members, through the K-12 SHIP board, to negotiate medical cost containment, quality assurances, and managed care measures with health care providers, that will partially insulate school district budgets and members' income from escalating health care costs; and

(7) encourage and facilitate delivery of health care services in rural areas of the state for K-12 SHIP members and for rural communities generally.

NEW SECTION. Section 2. Definitions. As used in [sections 1 through 7], the following definitions apply:

(1) "Basic plan" means a health benefit plan adopted by the board that provides core benefits for each member and the

member's designated dependents and that provides lower premiums and higher member cost sharing than under the standard plan or the preferred plan. The basic plan premium for an individual employee-only member may not exceed the amount of the state incentive credit provided for in [section 3].

(2) "Board" means the K-12 SHIP board established in [section 5].

(3) "Composite-rate premium" means the average per-enrollee premium cost for local employers and members who would otherwise be enrolled in the core benefits or core and other supplemental group benefits plans pursuant to the tiered-rate premium structure established by the board, but where, by collective bargaining or by local employer policy regarding employees not represented by collective bargaining, the employer has chosen to select a specified core or core and other group benefit plan for enrollment by local members on a composite premium rate structure.

(4) "Core benefits" means group hospitalization, health, medical, surgical insurance benefits, as well as pharmaceutical benefits offered in all K-12 SHIP benefit plans other than the basic plan offered by the K-12 SHIP for members and their designated dependents on a statewide basis pursuant to [sections 1 through 7].

(5) "Department" means the department of administration provided for in 2-15-1001.

(6) "Dependent" means:

(a) a lawful spouse or declared common law spouse;

(b) a child under the age of 25 who is unmarried, not employed with an organization for which the dependent is entitled to group insurance, and not in full-time active military service; or

(c) a child of any age who is disabled and dependent upon the parent as provided in 33-22-506 and 33-30-1003;

(7) "Employee" means a person employed by a public school elementary or high school district, as defined in 20-6-101, a K-12 school district, as defined in 20-6-701, or an education cooperative, as described in 20-7-451, who is regularly employed for 30 or more hours a week during the school year or employed for fewer hours as specified in a collective bargaining agreement or by school district or education cooperative policy in a nonbargaining school district or education cooperative. The term does not include an employee who is enrolled in a health benefit plan provided by a multiple employer welfare arrangement or a retiree or a school board trustee who is a member of the K-12 statewide health insurance program.

(8) "Employer" means the governing body of a public elementary or high school district, as defined in 20-6-101, a K-12 school district, as defined in 20-6-701, or an education cooperative, as described in 20-7-451.

(9) "Group benefits" means core benefits and other supplemental group benefits, including but not limited to, dental, vision, disability, accidental death and dismemberment, life, and other similar and related benefits offered to members and dependents by the K-12 SHIP pursuant to [sections 1 through

7].

(10) "K-12 SHIP" means the K-12 statewide health insurance program established pursuant to [sections 1 through 7].

(11) "Managed care plan" means a plan provided by a health care provider network that is subject to review and regulation as a health maintenance organization pursuant to Title 33, chapter 31, and the provides health care or other benefits on a local, regional, or statewide basis.

(12) "MEA-MFT" means the merged organizations formerly known as the Montana education association and the Montana federation of teachers.

(13) "Medicare supplement plan" means a plan adopted by the board that offers core benefits for members and their designated dependents who are enrolled in medicare and that supplements benefits offered under the medicare program. The term may include a medicare managed care plan.

(14) "Multiple employer welfare arrangement" means a national health and benefits program, as defined by section 3(40) of the Employment Retirement Income Security Act of 1974, that is sponsored by a national union or association and that provides health insurance benefits for local employers and specified employee groups on the effective date of this act pursuant to a collective bargaining agreement.

(15) "Preferred plan" means a plan adopted by the board that provides core benefits and pharmaceutical benefits for each member and the member's designated dependents and that provides a higher premium and lower member cost sharing than occurring under

the standard plan.

(16) "Retiree" means:

(a) an employee who has terminated employment with an employer and who, at the time of termination, was continuously employed for a period of 10 or more school years, was 55 years of age or older, and was enrolled in the K-12 SHIP and at the time of termination of employment elected continued enrollment in the K-12 SHIP;

(b) an employee who has terminated employment with an employer and who, at the time of termination was enrolled in the K-12 SHIP and was eligible for normal retirement pursuant to law or rules of the public employees retirement system or the teachers' retirement system and at the time of termination of employment elected continued enrollment in the K-12 SHIP;

(c) an employee or trustee who was enrolled prior to July 1, 2006, as a retiree under terms of the school district or education cooperative health benefit plan and who enrolls in the K-12 statewide health insurance program if the employer elects to participate in the K-12 SHIP; or

(d) a trustee who terminated board trusteeship with a school district and who, at the time of termination, was continuously enrolled in the K-12 SHIP and at the time of termination elected continued enrollment in the K-12 SHIP.

(17) "Standard plan" means a plan adopted by the board that provides core benefits and pharmaceutical benefits for each member and the member's designated dependents and that provides a higher premium and lower member cost sharing than occurring under

the basic plan and is actuarially equivalent in value to the state of Montana's traditional health benefit plan as existing on July 1, 2003.

(18) "Tiered-rate premium" means the premium cost established by the board that is necessary to fund members enrolled as single, single and dependents, two-party, family, and other enrollment categories established by the board.

(19) "Trustee" means a member of a public school board who, by a local board policy, is eligible to participate and has elected to enroll in the K-12 SHIP.

NEW SECTION. Section 3. Incentive credit -- voluntary employer participation -- window of eligibility -- impact on collective bargaining. (1)(a) There is a monthly incentive credit of \$200 for every employee enrolled in the K-12 SHIP. Every school district and education cooperative in the state is entitled to receive the incentive credit for its employees.

(b)(i) The incentive credit must be applied by the board to the premiums paid by an employer and an employee enrolled in the K-12 SHIP. The incentive credit must be applied for any month:

(A) in which an employee worked in a covered position for a majority of the working days in the month; and

(B) with a regularly scheduled school holiday or break, so long as the employee was expected to work or had worked at least 1080 hours or more during the school fiscal year or otherwise qualifies for the K-12 SHIP as a result of a collective bargaining agreement or school district or education cooperative

policy.

(ii) In the case of a change in employment by an employee covered by the K-12 SHIP, the incentive credit must be adjusted on a monthly basis with a full monthly credit provided for any month in which the employee worked in a covered position for a majority of the working days.

(c) The incentive credit must be increased annually by the rate of medical cost inflation, as determined by the U.S. department of labor, on December 31 of each calendar year.

(2) Employer participation in the K-12 SHIP is voluntary. Employers who do not participate may not receive the incentive credit for their employees. An employer can elect to participate in the K-12 SHIP and receive the incentive credit by a simple majority vote. The employer must file a written notice of election with the board on or before January 15, 2006, or anytime thereafter as allowed by the board. The notice must include the number of employees eligible to participate in the K-12 SHIP.

(3) The election to participate in the K-12 SHIP is solely a decision of the employer. The employer's elective participation decision is irrevocable, final, and continuing with respect to all employees qualified to enroll in the K-12 SHIP.

(4) (a) The employer's election to participate in the K-12 SHIP is specifically exempt from any claim of unfair labor practice, maintenance of benefits' clauses of collective bargaining agreements, or other collective bargaining violations respecting the Montana Public Employee Collective Bargaining Act provided for in Title 39, chapter 31. The incentive credit is

recognized as the employer contribution toward the premium obligated under the terms of a collective bargaining agreement.

(b) Employer and employee organization bargaining and collective bargaining agreement obligations under Title 39 with respect to the level of employer contribution toward premium payment, enrollment thresholds, choice of premium structure based on the tiered-rate, composite-rate, or other rates provided for by the board, the impact of the incentive credit, and other matters not specifically exempted in this subsection from coverage under Title 39, chapter 31, are maintained.

NEW SECTION. Section 4. K-12 statewide health insurance program -- enrollment -- collective bargaining of employer contributions. (1) On or after [the effective date of the act], the board shall adopt rules for:

- (a) defining the K-12 SHIP;
- (b) establishing the provisions of the core and other group benefit plans;
- (c) providing for employer participation election;
- (d) providing for member enrollment;
- (e) establishing electronic data collection and transfer systems; and
- (f) providing for employer and member educational and information systems.

(2) By December 1, 2005, the board shall adopt and maintain:

- (a) a basic plan, a standard plan, and a preferred plan, two or more locally available managed care plans, and one or more

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medicare supplement plans providing for health insurance benefits for each member and the member's designated dependents. The plans adopted by the board must be operating and available to all employers and members by no later than July 1, 2006.

(b) an actuarially sound schedule of tiered-rate and composite-rate premiums for each adopted plan that offers the option of selecting a premium payment method to all employers and members by collective bargaining or to nonbargaining members by local employer policy. The board shall, by December 1, 2005, and annually thereafter by no later than March 1, notify each school district, education cooperative, and the department of the adoption of the premium structure adopted for each plan for the subsequent fiscal year.

(3) By June 1, 2006, and by each succeeding June 1, employers shall notify the board of the employee member's selection of the basic plan, standard plan, preferred plan, or managed care plan and of the employer's selection of the premium payment method for all employee, retiree, and trustee members as determined by a collective bargaining agreement or employer policy for nonbargaining school districts or education cooperatives.

(4) By June 1, 2006, and by each succeeding June 1, retiree and trustee members of the K-12 SHIP shall notify the board of the members' selection of the basic plan, standard plan, preferred plan, managed care plan, or medicare supplement plan.

(5) By the later of either July 1, 2006, or upon the expiration of a collective bargaining agreement that is in effect

prior to [the effective date of this act] and extends through the 2007 contract year and that includes provisions that specifically restrict or are otherwise in conflict with the provisions of [sections 1 through 7], an employer shall:

(a) enroll each eligible employee in the K-12 SHIP and provide core benefits under the basic plan, standard plan, preferred plan, or managed care plan as elected by the employee; and

(b) enroll each retiree and trustee who is eligible under [sections 1 through 11] and who elects benefits coverage under the basic plan, standard plan, preferred plan, managed care plan, or medicare supplement plan.

(6) An eligible employee may waive enrollment and coverage in the K-12 SHIP by submitting a signed statement declining enrollment in the plan and acknowledging relinquishment of enrollment rights until the second general enrollment period as established by the board following the employee's signed statement declining enrollment.

(7) An eligible retiree or eligible trustee may waive enrollment and coverage in the K-12 SHIP by submitting a signed statement declining enrollment in the plan and acknowledging complete, final, and irrevocable relinquishment of enrollment rights in the K-12 SHIP.

(8) Except as provided in subsection (11) and unless otherwise prohibited by law, an employer shall, by July 1, 2006, and monthly after that date, transfer to the board from any budgeted fund or nonbudgeted fund, as defined in 20-9-201, the

premium amount in excess of \$200 determined by the board to be necessary to:

(a) insure and provide core benefits on behalf of each employee enrolled under the basic plan, standard plan, preferred plan, or managed care plan selected by the employee;

(b) repay the board of investment loans provided for under [section 7]; and

(c) implement the plan, pay administration costs, and establish reserves.

(9) (a) For an employee whose employment is covered by a collective bargaining agreement under Title 39, chapter 31, an employer's selection of tiered-rate or composite-rate premium structure for core benefits premium payments and other group benefits pursuant to this section and an employer's and employee's contributions for employee-selected core benefits and other group benefits made pursuant to subsection (2) or (3) must be determined by collective bargaining between the employer and the exclusive representative of the bargaining unit.

(b) For an employee whose employment is not covered by a collective bargaining agreement pursuant to Title 39, chapter 31, an employer's selection of tiered-rate or composite-rate premium structure for core benefits premium payments and other benefits pursuant to this section and an employer's and employee's contributions for employee-selected core benefits and other group benefits made pursuant to subsection (2) or (3) must be determined by employer policy.

(10) A trustee or a retiree may, at the time of retirement

and at the trustee's or retiree's expense, elect to be enrolled in the K-12 statewide health insurance program and receive health benefits under the basic plan, standard plan, preferred plan, or managed care plan as offered by the employer or may, if eligible, enroll in the medicare supplement plan.

(11) If by a collective bargaining agreement, the employer agrees to make payments for health and related insurance benefits for retired school personnel, the employer shall continue to provide benefits and make payments to the board pursuant to the terms of the collective bargaining agreement.

(12) The board shall deposit all reserve funds, premiums paid to the K-12 SHIP, and unused incentive credits and the money deposited is statutorily appropriated, as provided in 17-7-503, to the department to be expended for claims, payment of administrative costs, and loan repayments under the K-12 SHIP and to maintain actuarially sound reserves considered necessary for the K-12 SHIP.

(13) A local district with a self-funded health benefit plan or employee health group plan holding rate stabilization or other funds is required to use these funds of the health benefit plan to pay claims and other liabilities of the district's health benefit plan. Upon enrollment in the K-12 SHIP, the remaining reserves must be maintained by the district under the provisions of 20-3-331 and must be used to pay for employee benefit costs as determined by a collective bargaining agreement, employer policy, or as required by applicable state or federal law.

(14) The provisions of [sections 1 through 7] may not be

construed to require a specific contribution by either an employer or an employee toward the cost of core benefits and other benefits provided in [sections 1 through 7].

(15) Complying with the requirements of [sections 1 through 7] may not be interpreted as a refusal to bargain in good faith with an exclusive representative in violation of 39-31-401(5).

NEW SECTION. Section 5. K-12 statewide health insurance program board -- composition -- appointment -- compensation. (1)

There is a K-12 SHIP board.

(2) The board consists of nine members appointed to 5-year staggered terms by the governor. The members of the board must be appointed as follows:

(a) four members who are enrolled in the K-12 SHIP, including at least three members from a first-class district and at least one classified employee, from a list of at least eight nominees submitted by MEA-MFT;

(b) two representatives of public school administrators, including at least one from a first-class district, appointed from a list of at least four nominees submitted jointly by the school administrators of Montana and the Montana association of county superintendents of schools;

(c) two representatives of public school board trustees, including at least one representative from a first-class district, appointed from a list of at least four nominees submitted jointly by the Montana school boards association, Montana rural education association, and the Montana association

of school business officials; and

(d) one retiree who is a member of the K-12 SHIP.

(3) (a) Except as provided in subsection (3) (b), when a vacancy occurs the governor shall notify the organization or organizations authorized to submit nominations pursuant to subsection (2). Within 30 days of receiving notification, the authorized organization or organizations shall submit a list of nominees to the governor. If the organization or organizations fail to submit a list within 30 days, the governor may appoint any person meeting the requirements of the vacancy to fill the position.

(b) When a vacancy occurs in the retiree position, the governor shall appoint any person meeting the requirements of the vacancy to fill the position.

(4) Nominating organizations, when preparing nomination lists, and the governor, when making appointments, shall give consideration to those nominees with demonstrated experience in the operation, supervision, and administration of school health benefit plans.

(5) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121, except that the provisions of 2-15-121(2) (d) do not apply.

(6) Members of the board must be compensated and receive travel expenses in the same manner as members of quasi-judicial boards under 2-15-124(7).

NEW SECTION. Section 6. Powers and duties of board. (1)

The board shall:

(a) act as fiduciary for the K-12 SHIP and beneficiaries of the program;

(b) prepare requests for proposals and contract for claims payment, actuarial, and other specialized professional services;

(c) meet at least six times annually and review monthly enrollment, claims, claims payment, and fund financial status information and conduct financial status reviews;

(d) comply with the provisions of [sections 1 through 37] and [sections 8 through 27];

(e) determine the preferred methods for providing K-12 SHIP education and information services to members and employers, provide effective and cost-efficient administration of the K-12 SHIP, and establish procedures for payroll office assistance, enrollment and data transfer processing, claims processing, and member claims assistance;

(f) pursuant to the applicable provisions of Title 33 and fiduciary duty, determine whether the K-12 SHIP requires reinsurance or stop-loss protections, and if so, determine the most appropriate specific or aggregate reinsurance levels;

(g) undergo annual compliance and financial audits as required by applicable provisions of law and regulation pursuant to Title 33 and the insurance department;

(h) establish the basic, standard, and preferred plans, a network of managed health care plans, and medicare health supplement plans;

(i) closely monitor the performance of each health benefit

plan and annually adjust plan benefits as determined prudent and necessary;

(j) establish supplemental or rider dental, vision, life, long-term disability, and other statewide insurance plans to be made available to districts for voluntary participation;

(k) annually set tiered-rate and composite-rate premiums for eligible member enrollment in the health benefit plans;

(l) ensure that the individual premium for the basic plan does not exceed the amount of the incentive credit provided for in [section 3] and continue to offer access to the basic plan;

(m) repay the start-up loan and any draw on the line-of-credit provided for in [section 7] from the incentive credit provided for in [section 3] and health benefit plan premiums;

(n) establish, review, and revise provisions of core benefit plans, local managed care plans, and local network provider agreements and establish and review provisions of other group benefit plans offered by the board;

(o) annually determine benefit provisions and set premiums needed to fund core benefits, pay administrative costs, provide reserves, and set premiums necessary for all other group benefit plans offered by the board;

(p) ensure that the administrative costs of the K-12 SHIP do not exceed 7% of the premium charged for tiered-rate or composite-rate plan coverages;

(q) conduct claims and any financial and operational reviews that are necessary to properly monitor the performance of the group benefit plan vendors;

(r) work with the office of public instruction, the teachers retirement system, and the public employee retirement system to develop a database of school personnel information; and

(s) adopt rules to implement the provisions of [sections 1 through 7], including but not limited to rules to:

(i) determine timely and automated procedures for monthly enrollment of employee, retiree, and trustee members, bid specifications, claim forms and procedures, claims distribution, appeal procedures, and the general administration and operation of the K-12 statewide health insurance program;

(ii) authorize the board to establish default selection and rate preference election for circumstances when an employer does not notify the board of locally bargained or otherwise determined choices by June 1 of each year;

(iii) coordinate benefits with other health plans, participate in cooperative purchasing as provided in 2-18-711, and provide for dual enrollment of spouses enrolled in a K-12 SHIP health benefit plan, the state employee group benefits plan, or the Montana university system health plans; and

(iv) provide for the re-enrollment of an employee who waived coverage during the initial enrollment period.

(2) The board shall hire and manage its own personnel, including an administrative accountant responsible for direct entry and access to the state budgeting and accounting database, and may, by contract, hire personnel for all administrative services, including but not limited to:

(a) clerical and plan oversight and supervision services

required by the board;

(b) with regard to enrollment of members in the health benefit plans, coordinating enrollment with employer staff and payroll systems, preparing descriptive materials, providing member and employer information concerning plan benefits and enrollment and claims processing procedures, and providing members with assistance as needed for claims submission and processing;

(c) claims processing and record keeping, full financial accounting, and reporting to the board;

(d) actuarial and plan design services, as needed;

(e) (i) preparation of an annual report that:

(A) describes enrollment trends within the K-12 SHIP, benefit provisions and premium structure of the health benefit plans, and administrative experience relating to the plans;

(B) details historical and projected program costs and the status of reserve funds; and

(C) makes recommendations, if any, for changes in the existing K-12 SHIP, health benefit plans, premium structures, or related matters.

(ii) The annual report must be submitted to the board of public education.

(f) preparation of informational and educational services through local employers for members regarding the K-12 SHIP and health benefit plans;

(g) providing assistance and training to public school benefits and payroll administrators and to members regarding

enrollment and premium payment procedures associated with the K-12 SHIP and health benefit plans; and

(h) providing assistance for members and employers to establish and maintain locally available wellness programs.

(3) The board shall include as part of the costs of the K-12 SHIP the costs of the board in administering health benefits plans and claims processing, repayment of board of investment implementation and reserve loans as provided in [section 7], and other benefit consulting, actuarial, and auditing costs.

(4) The board is subject to the Montana Procurement Act in Title 18, chapter 4.

NEW SECTION. Section 7. Board of investment loan and line of credit -- limitations on use. (1) If considered prudent under the provisions of 17-6-201, the board of investments may prior to July 1, 2005, provide to the K-12 SHIP board a loan in the amount of \$2 million for the purpose of implementing the K-12 SHIP and health benefit plans.

(2) The board of investments may on July 1, 2005, authorize and provide to the K-12 SHIP board a line of credit in the amount of \$24 million to be available on or before July 1, 2006, to establish initial reserves for the K-12 SHIP health benefit plans.

(3) The loan and line of credit provided for in subsections (1) and (2) must be issued pursuant to the Municipal Finance Consolidation Act of 1983 authorized in Title 17, chapter 5, part 16, and the repayment term established for a loan may not exceed

a period of 10 years.

(4) For any loan or line of credit provided under this section, the K-12 SHIP board shall establish and maintain a specific loan repayment account and shall repay the loan or line of credit from premiums charged for core and other group benefits.

(5) The loan authorized under subsection (1) and the line of credit authorized under subsection (2) may not be used to pay any claims incurred, but not paid, prior to July 1, 2006, or for any other liabilities incurred prior to July 1, 2006.

NEW SECTION. Section 8. Definition. As used in [sections 8 through 27], 33-1-102, and 33-1-201:

(1) "Board" means the K-12 statewide health insurance program board established in [section 5].

(2) "Health services" has the meaning provided in 33-30-101.

(3) "K-12 SHIP" means the K-12 statewide health insurance program established pursuant to [sections 1 through 7].

(4) "Health benefit plans" means the basic plan, preferred plan, and standard plan as defined in [section 2].

NEW SECTION. Section 9. Application of this chapter -- construction of other related laws. (1) The K-12 SHIP is subject to the provisions of [sections 8 through 27]. In addition to the provisions contained in [sections 8 through 27], other chapters and provisions of Title 33 apply to the K-12 SHIP in the same manner that they are applicable to a domestic health service

corporation as follows: 33-3-3-7; 33-3-308; 33-3-431; 33-3-701 through 33-3-704; Title 33, chapter 2, part 19; and Title 33, chapters 1, 15, 18, 19, and 22, except 33-22-111.

(2) A law of this state other than the provisions of [sections 8 through 27] applicable to the K-12 SHIP must be construed in accordance with the fundamental nature of the K-12 SHIP, and in the event of a conflict, the provisions of [sections 8 through 27] prevail.

NEW SECTION. **Section 10. Examination of the K-12 SHIP.** (1)
If the commissioner believes the K-12 SHIP is unable or potentially unable to fulfill its contractual obligations to its members, the commissioner may conduct an examination of that program.

(2) In addition to the examination authorized in subsection (1), at least once every 4 years, the commissioner shall conduct an examination of the K-12 SHIP to determine if the program is fulfilling its contractual obligations by prompt satisfaction of claims at the highest monetary level consistent with reasonable dues or fees, and that the program's management exercises appropriate fiscal controls, operations, and personnel policies to assure that efficient and economic administration restrains overhead costs for the benefit of its members.

(3) When the K-12 SHIP is examined, its officers and employees shall produce and make available to the commissioner or the commissioner's examiners the accounts, records, documents, files, information, assets, and matters in its possession or

control relating to the subject of the examination.

(4) The commissioner or the commissioner's examiner shall make a verified report of the examination.

(5) The report must comprise only facts appearing from the books, papers, records, or documents of the program examined or ascertained from the testimony, under oath, of individuals concerning its affairs and conclusions and recommendations as warranted by those facts.

(6) The commissioner shall furnish a copy of the proposed report to the board not less than 20 days prior to its filing in the commissioner's office. If the board requests a hearing, in writing, the commissioner shall grant one with respect to the report and may not file the report until after the hearing and after modifications, if any, the commissioner considers proper.

(7) The board shall pay for each examination conducted pursuant to subsections (1) and (2) in accordance with 33-1-413.

NEW SECTION. Section 11. Montana Administrative Procedure Act applicable. All final administrative actions or decisions of the commissioner under [sections 8 through 27] are subject to judicial review and in accordance with the Montana Administrative Procedure Act.

NEW SECTION. Section 12. Annual statement. (1) On or before September 1 of each year, the board shall file an annual financial statement for the preceding year. The statement must be accompanied by an actuarial opinion attesting to the K-12 SHIP's

reserves.

(2) The board shall file a statement containing any other information concerning its financial affairs that may be reasonably requested by the commissioner.

(3) The commissioner may, after notice and hearing, impose a fine not to exceed \$100 a day and not to exceed \$1,000 if the board fails to file an annual statement as required by this section.

NEW SECTION. **Section 13. Notice of violation -- conference.** If the commissioner for any reason believes that a violation of [sections 8 through 27] has occurred or is threatened, the commissioner may give written notice to the board and to the representatives or other persons who appear to be involved in the suspected violation to arrange a conference with the alleged violators or their authorized representative. The purpose of the conference is to attempt to ascertain the facts relating to the suspected violation and, in the event it appears that a violation has occurred or is threatened, to arrive at an adequate and effective means of correcting or preventing the violation.

NEW SECTION. **Section 14. Cease and desist order.** (1) The commissioner acting in the name of the state may issue an order directing the board or its representative to cease and desist from engaging in any act or practice in violation of the provisions of [sections 8 through 27].

(2) Within 15 days after service of the order of cease and desist, the respondent may request a hearing on the questions of whether acts or practices in violation of [sections 12 through 37] have occurred. These hearings must be conducted under the Montana Administrative Procedure Act.

NEW SECTION. **Section 15. Injunctive relief.** In the case of any violation of the provisions of [sections 8 through 27], if the commissioner elects not to issue a cease and desist order or in the event of noncompliance with a cease and desist order issued under [sections 8 through 27], the commissioner may institute a proceeding to obtain injunctive relief, receivership, or other appropriate relief in the district court of the county in which the violation occurs or in which the principal place of business of the K-12 SHIP is located. Any proceeding under this section must conform to the requirements of Title 27, chapter 19 or 20, except that the commissioner may not be required to allege facts tending to show the lack of an adequate remedy at law or tending to show irreparable damage or loss.

NEW SECTION. **Section 16. Reserves -- requirements suspended.** (1) The K-12 SHIP shall maintain at all times unobligated funds adequate to:

(a) provide the hospital, medical-surgical, and other health services made available to its members and beneficiaries; and

(b) meet all costs and expenses.

(2) In addition, reserves of the K-12 SHIP in cash,

certificates of deposit, obligations issued or guaranteed by the government of the United States, or other assets approved by the commissioner must be maintained in an amount not less than:

(a) \$750,000; or

(b) an amount equal to one month's average income from premiums paid to the K-12 SHIP by its members or beneficiaries, based on an average of the preceding 12 months, whichever is less.

(3) The determination of minimum reserves is subject, as to amounts payable to participating providers of the health services, to any right of the program to prorate the amounts under the terms of its health services contracts with providers.

(4) The commissioner may decrease or suspend the requirements of this section if the commissioner finds that the action is in the best interest of the members of the K-12 SHIP.

(5) The K-12 SHIP may satisfy the reserve requirements of this section by obtaining a line of credit from the board of investments as provided in [section 7].

NEW SECTION. Section 17. Annual report by certified public accountant. (1) The board shall file annually with the commissioner, on or before December 1, a financial statement audited by a certified public accountant pursuant to rules by the commissioner.

(2) (a) The commissioner may establish rules governing the content and preparation of the report required by subsection (1).

(b) The report must include:

(i) the K-12 SHIP's financial statements for the most recent calendar year;

(ii) an opinion by the certified public accountant concerning the accuracy and fairness of the program's representation of its financial statements; and

(iii) other information that the commissioner specifies by rule.

NEW SECTION. Section 18. Fees. (1) The K-12 SHIP shall pay the following fees to the commissioner for enforcement of the provisions of [sections 8 through 27]:

(a) for a certified copy of any document or other paper filed in the office of the commissioner, per page, 50 cents;

(b) filing of a health benefit plan, \$25;

(c) filing of a health benefit plan package, \$100; and

(d) filing an annual statement, \$25.

(2) The commissioner shall promptly deposit with the state treasurer, to the credit of the state special revenue fund of the state auditor's office, all fees received under this section.

NEW SECTION. Section 19. Forms -- filing -- approval. A copy of all forms of the health benefit plans or any type of endorsement or rider must be filed with and approved by the commissioner in accordance with Title 33, chapter 1, part 5.

NEW SECTION. Section 20. Allowed contracts. (1) The K-12 SHIP may enter into contracts for the rendering of health

services on behalf of its members or beneficiaries with:

(a) hospitals maintained by a governmental body or agency;

(b) hospitals maintained by a nonprofit corporation organized for hospital purposes; or

(c) other corporations, organizations, associations, partnerships, or individuals furnishing health services.

(2) The K-12 SHIP may enter into agreements or contracts with other organizations or corporations licensed to do business in this state or in any other state for:

(a) the transfer of members or beneficiaries;

(b) the reciprocal joint provisions of benefits to the members or beneficiaries of the K-12 SHIP and of those other organizations or corporations; or

(c) other joint undertakings the board approves.

NEW SECTION. Section 21. Grievance procedure for members.

Any individual member of the K-12 SHIP, who believes to be aggrieved by any act or omission of the K-12 SHIP or its officers, directors, or employees may file a statement in writing of the grievance in the office of the commissioner, and the commissioner may investigate the grievance. An investigation by the commissioner may not act as a bar to any suit in a court of competent jurisdiction instituted by an aggrieved member or as a bar to any defense by the K-12 SHIP.

NEW SECTION. Section 22. Nonliability for injuries caused by contractees. The K-12 SHIP is not liable for injuries

resulting from neglect, misfeasance, malfeasance, or malpractice on the part of any person, organization, agency, or corporation rendering health services to the program's members and beneficiaries.

NEW SECTION. Section 23. Discrimination between individuals -- restrictions -- ratesetting by commissioner prohibited. (1) A person may not knowingly discriminate or permit any unreasonable discrimination between individuals of essentially the same condition of health in any classification that may be established by the K-12 SHIP in the amount of premiums charged for any plan or in the benefits payable under any plan or in any of the terms and conditions of the plan or in any manner whatever.

(2) This section does not restrict the right of the K-12 SHIP, within the discretion of the board, to limit or define the classes of persons who are eligible to become members or the benefits that it will furnish and define the benefits as it undertakes to furnish into classes or kinds. The K-12 SHIP may make available to its members health services or reimbursement for health services as the board may approve.

(3) [Sections 8 through 27] do not give the commissioner the power to fix and determine a rate level by classification or otherwise.

NEW SECTION. Section 24. Continuation of coverage for persons with disabilities. A K-12 SHIP health benefit plan

delivered or issued for delivery in this state that provides that coverage of a dependent child of a member of the covered group terminates upon attainment of the limiting age for dependent children specified in the contract must also provide in substance that attainment of the limiting age may not operate to terminate the coverage of the child while the child is and continues to be both incapable of self-sustaining employment by reason of mental retardation or physical disability and chiefly dependent upon the member for support and maintenance. Proof of retardation or disability and dependency must be furnished to the K-12 SHIP by the member within 31 days of the child's attainment of the limiting age and subsequently as may be required by the K-12 SHIP. Proof may not be required more frequently than annually after the 2-year period following the child's attainment of the limiting age.

NEW SECTION. Section 25. Dentists performing services common to both medicine and dentistry. A K-12 SHIP health benefit plan may exclude coverage for dental care or services, but a plan may not disallow payment to a dentist for health care or services for which a physician would be paid, provided the dentist is licensed under the law of this state to perform the care or service.

NEW SECTION. Section 26. Subrogation rights. A K-12 SHIP contract may contain a provision providing that, to the extent necessary for reimbursement of benefits paid to or on behalf of

the insured, the K-12 SHIP is entitled to subrogation, as provided for in [section 27], against a judgment or recovery received by the insured from a third party found liable for a wrongful act or omission that caused the injury necessitating benefit payments.

NEW SECTION. Section 27. Notice -- shared costs of third-party action -- limitation. (1) If an insured intends to institute an action for damages against a third party, the insured shall give the K-12 SHIP reasonable notice of the insured's intention to institute the action.

(2) The insured may request that the K-12 SHIP pay a proportionate share of the reasonable costs of the third-party action, including attorney fees.

(3) The K-12 SHIP may elect not to participate in the cost of the action. If an election is made, the K-12 SHIP waives 50% of any subrogation rights granted to it by [section 26].

(4) The K-12 SHIP's right of subrogation granted in [section 36] may not be enforced until the injured insured has been fully compensated.

Section 28. Section 2-18-103, MCA, is amended to read:

"2-18-103. Officers and employees excepted. Parts 1 through 3 and 10 do not apply to the following officers and employees in state government:

- (1) elected officials;
- (2) county assessors and their chief deputies;

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- (3) employees of the office of consumer counsel;
- (4) judges and employees of the judicial branch;
- (5) members of boards and commissions appointed by the governor, the legislature, or other elected state officials;
- (6) officers or members of the militia;
- (7) agency heads appointed by the governor;
- (8) academic and professional administrative personnel with individual contracts under the authority of the board of regents of higher education;
- (9) academic and professional administrative personnel and live-in houseparents who have entered into individual contracts with the state school for the deaf and blind under the authority of the state board of public education;
- (10) investment officer, assistant investment officer, executive director, and five professional staff positions of the board of investments;
- (11) four professional staff positions under the board of oil and gas conservation;
- (12) assistant director for security of the Montana state lottery;
- (13) executive director and employees of the state compensation insurance fund;
- (14) state racing stewards employed by the executive secretary of the Montana board of horseracing;
- (15) executive director of the Montana wheat and barley committee;
- (16) commissioner of banking and financial institutions;

- (17) training coordinator for county attorneys;
- (18) employees of an entity of the legislative branch consolidated, as provided in 5-2-504;
- (19) chief information officer in the department of administration;
- (20) chief business development officer and six professional staff positions in the office of economic development provided for in 2-15-218;
- (21) employees of the K-12 statewide health insurance board established in [section 5]."

{ Internal References to 2-18-103:
X 2-18-101 X 2-18-201 X 2-18-301 X 32-1-211
X 44-4-101 }

Section 29. Section 33-1-102, MCA, is amended to read:

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

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

- (a) domestic farm mutual insurers as identified in chapter 4, except as stated in chapter 4;
- (b) domestic benevolent associations as identified in chapter 6, except as stated in chapter 6; and

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

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

(4) This code applies to the K-12 SHIP. The existence of the K-12 SHIP is governed by [sections 8 through 27] and related sections of the Montana Code Annotated.

~~(4)~~(5) This code does not apply to health maintenance organizations or to managed care community networks, as defined in 53-6-702, to the extent that the existence and operations of those organizations are governed by chapter 31 or to the extent that the existence and operations of those networks are governed by Title 53, chapter 6, part 7. The department of public health and human services is responsible to protect the interests of consumers by providing complaint, appeal, and grievance procedures relating to managed care community networks and health maintenance organizations under contract to provide services under Title 53, chapter 6.

~~(5)~~(6) This code does not apply to workers' compensation insurance programs provided for in Title 39, chapter 71, parts 21 and 23, and related sections.

~~(6)~~(7) The department of public health and human services may limit the amount, scope, and duration of services for programs established under Title 53 that are provided under contract by entities subject to this title. The department of

public health and human services may establish more restrictive eligibility requirements and fewer services than may be required by this title.

~~(7)~~(8) This code does not apply to the state employee group insurance program established in Title 2, chapter 18, part 8.

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

~~(9)~~(10) (a) ~~This~~ Except for the K-12 SHIP, this code does not apply to any arrangement, plan, or interlocal agreement between political subdivisions of this state in which the political subdivisions undertake to separately or jointly indemnify one another by way of a pooling, joint retention, deductible, or self-insurance plan.

(b) ~~This~~ Except for the K-12 SHIP, this code does not apply to any arrangement, plan, or interlocal agreement between political subdivisions of this state or any arrangement, plan, or program of a single political subdivision of this state in which the political subdivision provides to its officers, elected officials, or employees disability insurance or life insurance through a self-funded program.

~~(10)~~(11) (a) This code does not apply to the marketing of, sale of, offering for sale of, issuance of, making of, proposal to make, and administration of a service contract.

(b) A "service contract" means a contract or agreement for a separately stated consideration for a specific duration to perform the repair, replacement, or maintenance of property or to indemnify for the repair, replacement, or maintenance of property

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

~~(11)~~(12) (a) Subject to 33-18-201 and 33-18-242, this code does not apply to insurance for ambulance services sold by a county, city, or town or to insurance sold by a third party if the county, city, or town is liable for the financial risk under the contract with the third party as provided in 7-34-103.

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

{ *Internal References to 33-1-102:*
X 33-35-103 }

Section 30. Section 33-1-201, MCA, is amended to read:

"33-1-201. Definitions -- insurance in general. For the purposes of this code, the following definitions apply unless the context requires otherwise:

(1) An "alien insurer" is one formed under the laws of any country other than the United States, its states, districts, territories, and commonwealths.

(2) An "authorized insurer" is one duly authorized by subsisting certificate of authority issued by the commissioner to transact insurance in this state.

(3) A "domestic insurer" is one incorporated under the laws of this state.

(4) A "foreign insurer" is one formed under the laws of any jurisdiction other than this state. Except where distinguished by context, foreign insurer includes also an alien insurer.

(5) (a) "Insurance" is a contract whereby one undertakes to indemnify another or pay or provide a specified or determinable amount or benefit upon determinable contingencies.

(b) Insurance does not include contracts for the installation, maintenance, and provision of inside telecommunications wiring to residential or business premises.

(6) "Insurer" includes every person engaged as indemnitor, surety, or contractor in the business of entering into contracts of insurance. The term also includes a health service corporation in the provisions listed in 33-30-102 and the K-12 SHIP in the provisions listed in [section 9].

(7) A "resident domestic insurer" is an insurer incorporated under the laws of this state and:

(a) if a mutual company, not less than one-half of the policyholders are natural persons who are residents of this state; or

(b) if a stock insurer, not less than one-half of the shares are owned by natural persons who are residents of this state and all of the directors and officers of the insurer are

residents of this state.

(8) "State", when used relating to jurisdiction, means a state, the District of Columbia, or a territory, commonwealth, or possession of the United States.

(9) "Transact", with respect to insurance, includes any of the following:

- (a) solicitation and inducement;
- (b) preliminary negotiations;
- (c) effectuation of a contract of insurance;
- (d) transaction of matters subsequent to effectuation of the contract of insurance and arising out of it.

(10) An "unauthorized insurer" is one not authorized by subsisting certificate of authority issued by the commissioner to transact insurance in this state."

{ Internal References to 33-1-201:
X 33-2-109 X 33-2-1101 X 33-12-102 X 33-12-112
X 33-22-903 X 33-31-102 }

Section 31. Section 17-5-1608, MCA, is amended to read:

"17-5-1608. Limitations on amounts. The board may not issue any bonds or notes that cause the total outstanding indebtedness of the board under this part, except for bonds or notes issued to fund or refund other outstanding bonds or notes or to purchase registered warrants or tax or revenue anticipation notes of a local government as defined in 7-6-1101, to exceed ~~\$120~~ \$144 million."

{ Internal References to 17-5-1608:
x 15-1-141 }

Section 32. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations -- definition -- requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-15-151; 2-17-105; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-1-113; 15-1-121; 15-23-706; 15-35-108; 15-36-332; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-11-404; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; [section 4]; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-5-306; 23-5-409; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 42-2-105; 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-6-703; 53-24-108; 53-24-206; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-2-362;

80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513;
90-3-1003; 90-6-710; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 2 and 5, Ch. 481, L. 2003, the inclusion of 90-6-710 terminates June 30, 2005; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 3 and 6, Ch. 481, L. 2003, the inclusion of 15-35-108 terminates June 30, 2010; and pursuant to sec. 135, Ch. 114, L. 2003, the inclusion of 2-15-151 terminates June 30, 2005.) "

{ *Internal References to 17-7-502:*

X 2-15-151	X 2-17-105	X 5-13-403	X 10-3-203
X 10-3-310	X 10-3-312	X 10-3-312	X 10-3-314

X 10-4-301	X 15-1-111	X 15-1-113	X 15-1-121
X 15-23-706	X 15-35-108	X 15-35-108	X 15-36-332
X 15-37-117	X 15-38-202	X 15-38-202	X 15-65-121
X 15-65-121	X 15-70-101	X 16-11-404	X 17-1-508
X 17-3-106	X 17-3-212	X 17-3-222	X 17-3-241
X 17-6-101	X 17-7-304	X 17-7-501	X 18-11-112
X 19-3-319	X 19-9-702	X 19-13-604	X 19-17-301
X 19-18-512	X 19-19-305	X 19-19-506	X 19-20-604
X 20-8-107	X 20-9-534	X 20-9-622	X 20-26-1503
X 22-3-1004	X 23-5-306	X 23-5-409	X 23-5-612
X 23-5-631	X 23-7-301	X 23-7-402	X 37-43-204
X 37-51-501	X 39-71-503	X 42-2-105	X 44-12-206
X 44-13-102	X 50-4-623	X 53-1-109	X 53-6-703
X 53-24-108	X 53-24-108	X 53-24-206	X 61-3-415
X 69-3-870	X 75-1-1101	X 75-5-1108	X 75-6-214
X 75-10-622	X 75-11-313	X 77-2-362	X 80-2-222
X 80-4-416	X 80-5-510	X 80-11-518	X 82-11-161
X 87-1-513	X 90-3-1003	X 90-6-710	X 90-9-306 }

NEW SECTION. **Section 33. {standard} Codification**

instruction. (1) [Sections 1 through 7] are intended to be codified as an integral part of Title 20, chapter 9, and the provisions of Title 20, chapter 9, apply to [sections 1 through 7].

(2) [Sections 8 through 27] are intended to be codified as an integral part of Title 33, and the provisions of Title 33, apply to [sections 8 through 27].

NEW SECTION. **Section 34. Implementation of staggered**

terms. (1) To implement the staggered-term system provided for in [section 5], the first terms of the members are as follows:

- (a) three members shall serve 3-year terms;
- (b) three members shall serve 4-year terms; and
- (c) three members shall serve 5-year terms.

(2) Upon expiration of the terms provided for in subsection

(1), each member shall serve a 5-year term.

NEW SECTION. **Section 35. {standard} Effective date.** [This act] is effective on passage and approval and applies to contracts entered into on or after [the effective date of this act].

- END -

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