

1 SENATE BILL NO. 364

2 INTRODUCED BY S. FITZPATRICK

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING INSURANCE LAWS; PROVIDING A
5 FRAMEWORK FOR LIQUIDITY STRESS TESTING; PROVIDING THE COMMISSIONER CERTAIN
6 AUTHORITY TO REQUIRE CERTAIN DOMICILIARY HOLDING COMPANIES TO FILE A GROUP CAPITAL
7 CALCULATION AND LIQUIDITY STRESS TEST; ADDING CONFIDENTIALLY PROTECTIONS FOR DATA
8 THAT GROUPS MAY SUBMIT FOR THE GROUP CAPITAL CALCULATION AND LIQUIDITY STRESS TEST;
9 PROVIDING REGULATORY LAWS FOR INTERNATIONALLY ACTIVE INSURANCE GROUPS; PROVIDING
10 DEFINITIONS; PROVIDING RULEMAKING AUTHORITY; AND AMENDING SECTIONS 33-2-1101, 33-2-
11 1111, AND 33-2-1116, MCA."

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

14
15 **Section 1.** Section 33-2-1101, MCA, is amended to read:

16 **"33-2-1101. Definitions.** As used in this part, the following definitions apply unless the context
17 requires otherwise:

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

21 (2) "Control", including the terms "controlling", "controlled by", and "under common control with",
22 means the possession, direct or indirect, of the power to direct or cause the direction of the management and
23 policies of a person. This power may be evidenced through the ownership of voting securities, by contract other
24 than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result
25 of an official position with or corporate office held by the person. Control is presumed to exist if any person
26 directly or indirectly owns, controls, holds with the power to vote, or holds proxies representing 10% or more of
27 the voting securities of any other person. This presumption may be rebutted by a showing made in the manner
28 provided by 33-2-1112 that control does not exist in fact. The commissioner may determine, after furnishing all

1 persons in interest notice and opportunity to be heard and making specific findings of fact to support such
2 determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

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

9 (4) "Group-wide supervisor" means the regulatory official authorized to engage in conducting and
10 coordinating group-wide supervision activities who is determined or acknowledged by the commissioner under
11 [section 4] to have sufficient significant contacts with the internationally active insurance group.

12 (5) "Group capital calculation instructions" means the group capital calculation instructions as adopted
13 by the NAIC and as amended by the NAIC from time to time in accordance with the procedures adopted by the
14 NAIC.

15 (4) (6) "Insurance holding company system" means two or more affiliated persons, one or more of
16 which is an insurer.

17 (6) (7) "Insurer" has the meaning provided in 33-1-201, except that the term does not include
18 agencies, authorities, or instrumentalities of the United States, its possessions and territories, the
19 Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state.

20 (8) "Internationally active insurance group" means an insurance holding company system that
21 includes an insurer registered 33-2-1111 and meets the following criteria:

22 (a) premiums written in at least three countries;

23 (b) the percentage of gross premiums written outside the United States is at least 10% of the
24 insurance holding company system's total gross written premiums; and

25 (c) based on a 3-year rolling average, the total assets of the insurance holding company system are
26 at least \$50 billion or the total gross written premiums of the insurance holding company system are at least
27 \$10 billion.

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

1 (10) "NAIC liquidity stress test framework" means a separate NAIC publication that includes a history
 2 of the NAIC's development of regulatory liquidity stress testing, the scope criteria applicable for a specific data
 3 year, and the liquidity stress test instructions and reporting templates for a specific data year, the scope criteria,
 4 instructions, and reporting template as adopted by the NAIC and as amended by the NAIC from time to time in
 5 accordance with the procedures adopted by the NAIC.

6 ~~(6)~~ (11) (a) "Person" means an individual, a corporation, a partnership, an association, a joint-stock
 7 company, a trust, an unincorporated organization, any similar entity, or any combination of the foregoing acting
 8 in concert.

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

11 (12) The "scope criteria," as detailed in the NAIC liquidity stress test framework, are the designated
 12 exposure bases along with minimum magnitudes thereof for the specified data year, used to establish a
 13 preliminary list of insurers considered scoped into the NAIC liquidity stress test framework for that data year.

14 ~~(7)~~ (13) A "securityholder" of a specified person is one who owns any security of that person,
 15 including common stock, preferred stock, debt obligations, and any other security convertible into or evidencing
 16 the right to acquire any of the foregoing.

17 ~~(8)~~ (14) A "subsidiary" of a specified person is an affiliate controlled by that person directly or
 18 indirectly through one or more intermediaries.

19 ~~(9)~~ (15) "Voting security" means any security convertible into or evidencing a right to acquire a voting
 20 security."

21

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

23 **"33-2-1111. Registration of insurers -- requisites -- termination.** (1) (a) An insurer authorized to
 24 do business in this state that is a member of an insurance holding company system shall register with the
 25 commissioner, except that a foreign insurer subject to disclosure requirements and standards adopted by
 26 statute or regulation in the jurisdiction of its domicile that are substantially similar to those contained in this
 27 section is not required to register.

28 (b) Any insurer subject to registration under this section shall register within 15 days after becoming

1 subject to registration, unless the commissioner for good cause extends the time for registration.

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

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

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

10 (b) the identity and relationship of every member of the insurance holding company system;

11 (c) transactions currently outstanding or that occurred during the last calendar year between the
12 insurer and its affiliates and the following agreements that are in force:

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

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

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

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

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

21 (vi) reinsurance agreements;

22 (vii) dividends and other distributions to shareholders; and

23 (viii) consolidated tax allocation agreements;

24 (d) a pledge of the insurer's stock, including stock of a subsidiary or controlling affiliate for a loan
25 made to a member of the insurance holding company system;

26 (e) if requested by the commissioner, financial statements of or within an insurance holding company
27 system, including all affiliates, which may include annual audited financial statements filed with the U.S.

28 securities and exchange commission pursuant to the Securities Act of 1933, as amended, or the Securities

1 Exchange Act of 1934, as amended, or the most recently filed parent corporation financial statements filed with
2 the U.S. securities and exchange commission;

3 (f) statements that the insurer's board of directors is responsible for and oversees corporate
4 governance and internal controls and that the insurer's officers or senior management have approved, have
5 implemented, and continue to maintain and monitor corporate governance and internal control procedures;

6 (g) all matters concerning transactions between registered insurers and any affiliates as may be
7 included from time to time in registration forms adopted or approved by the commissioner; and

8 (h) any other information required by the commissioner by rule.

9 (3) A registration statement must contain a summary outlining each item in the current registration
10 statement that represents a change from the prior registration statement.

11 (4) Information need not be disclosed on the registration statement filed pursuant to subsection (2) if
12 the information is not material for the purposes of this section. Unless the commissioner by rule or order
13 provides otherwise, sales, purchases, exchanges, loans or extensions of credit, or investments involving 1/2 of
14 1% or less of an insurer's admitted assets as of the prior December 31 are not material for purposes of this
15 section. The definition of materiality provided in this subsection does not apply for purposes of the group capital
16 calculation of the liquidity stress test framework.

17 (5) A person within an insurance holding company system subject to registration shall provide
18 complete and accurate information to an insurer if the information is reasonably necessary to enable the insurer
19 to comply with Title 33, chapter 2, part 11.

20 (6) Each registered insurer shall keep current the information required to be disclosed in its
21 registration statement by reporting all material changes or additions on amendment forms provided by the
22 commissioner within 15 days after the end of the month in which the registered insurer learns of each change
23 or addition.

24 (7) (a) The ultimate controlling person of every insurer subject to registration under this section shall
25 also file an annual enterprise risk report. The report must identify the material risks within the insurance holding
26 company system that could pose enterprise risk to the insurer to the best of the controlling person's knowledge
27 and belief. The report must be filed with the lead state commissioner of the insurance holding company system,
28 as determined by the procedures within the financial analysis handbook adopted by rule of the commissioner.

1 (b) Except as provided in this section, the ultimate controlling person of every insurer subject to
2 registration shall concurrently file with the registration an annual group capital calculation as directed by the
3 lead state commissioner. The report must be completed in accordance with the NAIC group capital calculation
4 instructions, which may permit the lead state commissioner to allow a controlling person that is not the ultimate
5 controlling person to file the group capital calculation. The report must be filed with the lead state commissioner
6 of the insurance holding company system as determined by the commissioner in accordance with the
7 procedures within the financial analysis handbook adopted by the NAIC. Insurance holding company systems
8 described below are exempt from filing the group capital calculation:

9 (i) an insurance holding company system that has only one insurer within its holding company
10 structure, that only writes business and is only licensed in its domestic state, and assumes no business from
11 any other insurer;

12 (ii) an insurance holding company system that is required to perform a group capital calculation
13 specified by the United States federal reserve board. The lead state commissioner shall request the calculation
14 from the federal reserve board under the terms of information-sharing agreements in effect. If the federal
15 reserve board cannot share the calculation with the lead state commissioner, the insurance holding company
16 system is not exempt from the group capital calculation filing.

17 (iii) an insurance holding company system whose non-U.S. group-wide supervisor is located within a
18 reciprocal jurisdiction as described in 33-2-1216 that recognizes the U.S. state regulatory approach to group
19 supervision and group capital;

20 (iv) an insurance holding company system:

21 (A) that provides information to the lead state that meets the requirements for accreditation under the
22 NAIC financial standards and accreditation program, either directly or indirectly through the group-wide
23 supervisor, who has determined such information is satisfactory to allow the lead state to comply with the NAIC
24 group supervision approach, as detailed in the NAIC financial analysis handbook; and

25 (B) whose non-U.S. group-wide supervisor that is not in a reciprocal jurisdiction recognizes and
26 accepts, as specified by the commissioner in regulation, the group capital calculation as the worldwide group
27 capital assessment for U.S. insurance groups who operate in that jurisdiction;

28 (v) notwithstanding the provisions of subsections (7)(b)(iii) and (7)(b)(iv), a lead state commissioner

1 shall require the group capital calculation for U.S. operations of any non-U.S. based insurance holding
2 company system where, after any necessary consultation with other supervisors or officials, it is deemed
3 appropriate by the lead state commissioner for prudential oversight and solvency monitoring purposes or for
4 ensuring the competitiveness of the insurance marketplace;

5 (vi) notwithstanding the exemptions from filing the group capital calculation stated in subsections
6 (7)(b)(i) through (7)(b)(iv), the lead state commissioner has the discretion to exempt the ultimate controlling
7 person from filing the annual group capital calculation or to accept a limited group capital filing or report in
8 accordance with criteria as specified by the commissioner in regulation;

9 (vii) if the lead state commissioner determines that an insurance holding company system no longer
10 meets one or more of the requirements for an exemption from filing the group capital calculation under this
11 section, the insurance holding company system shall file the group capital calculation at the next annual filing
12 date unless given an extension by the lead state commissioner based on reasonable grounds shown;

13 (c) The ultimate controlling person of every insurer subject to registration and also scoped into the
14 NAIC liquidity stress test framework shall file the results of a specific year's liquidity stress test. The filing must
15 be made to the lead state insurance commissioner of the insurance holding company system as determined by
16 the procedures within the financial analysis handbook adopted by the NAIC;

17 (i) The NAIC liquidity stress test framework includes scope criteria applicable to a specific data year.
18 These scope criteria are reviewed at least annually by the financial stability task force or its successor. Any
19 change to the NAIC liquidity stress test framework or to the data year for which the scope criteria are to be
20 measured are effective on January 1 of the year following the calendar year when such changes are adopted.
21 Insurers meeting at least one threshold of the scope criteria are considered scoped into the NAIC liquidity
22 stress test framework for the specified data year unless the lead state insurance commissioner, in consultation
23 with the NAIC financial stability task force or its successor, determines the insurer should not be scoped into the
24 framework for that data year. Similarly, insurers that do not trigger at least one threshold of the scope criteria
25 are considered scoped out of the NAIC liquidity stress test framework for the specified data year, unless the
26 lead state insurance commissioner, in consultation with the NAIC financial stability task force or its successor,
27 determines the insurer should be scoped into the framework for that data year.

28 (ii) Regulators wish to avoid having insurers scoped in and out of the NAIC liquidity stress test

1 framework on a frequent basis. The lead state insurance commissioner, in consultation with the financial
 2 stability task force or its successor, will assess this concern as part of the determination for an insurer.

3 (iii) The performance of, and filing of the results from, a specific year's liquidity stress test must comply
 4 with the NAIC liquidity stress test framework's instructions and reporting templates for that year and any lead
 5 state insurance commissioner determinations, in conjunction with the financial stability task force or its
 6 successor, provided within the framework.

7 (8) The commissioner shall terminate the registration of any insurer that demonstrates that the insurer
 8 no longer is a member of an insurance holding company system.

9 (9) The commissioner may require or allow two or more affiliated insurers subject to registration under
 10 this section to file a consolidated registration statement or consolidated reports amending their consolidated
 11 registration statement or their individual registration statements.

12 (10) The commissioner may allow an insurer that is authorized to do business in this state and that is
 13 part of an insurance holding company system to register on behalf of any affiliated insurer which is required to
 14 register under subsection (1) and to file all information and material required to be filed under this section."
 15

16 **Section 3.** Section 33-2-1116, MCA, is amended to read:

17 **"33-2-1116. Confidentiality of information.** (1) Documents, materials, and other information in the
 18 possession or control of the commissioner that are obtained by or disclosed to the commissioner or any other
 19 person in the course of an examination or investigation made pursuant to 33-2-1115 and all other information
 20 provided to the department of insurance reported pursuant to 33-2-1104(3)(l), 33-2-1104(3)(m), 33-2-1111, and
 21 33-2-1113 are confidential information as provided in 2-6-1002 and Title 2, chapter 6, part 10, are recognized
 22 by this state as being proprietary and contain trade secrets, and are confidential by law and privileged, are not
 23 subject to subpoena or discovery, and are not admissible in evidence in any private civil action. The
 24 commissioner is authorized to use the documents, materials, and other information to further any regulatory or
 25 legal action brought as a part of the commissioner's official duties. The commissioner may not otherwise make
 26 the documents, materials, or other information public without the prior written consent of the insurer to which
 27 the documents, materials, or other information pertains unless the commissioner, after giving notice and an
 28 opportunity to be heard to the insurer and the insurer's affiliates who would be affected, determines that the

1 interest of policyholders, shareholders, or the public would be served by the publication. On a determination
2 that the interest of policyholders, shareholders, or the public would be served, the commissioner may publish all
3 or any part of the documents, materials, or other information in a manner that the commissioner considers
4 appropriate.

5 (a) For purposes of the information reported and provided to the department of insurance pursuant to
6 33-2-1111(7)(b), the commissioner shall maintain the confidentiality of the group capital calculation and group
7 capital ratio produced within the calculation and any group capital information received from an insurance
8 holding company supervised by the federal reserve board or any U.S. group-wide supervisor.

9 (b) For purposes of the information reported and provided to the department pursuant to 33-2-
10 1111(7)(c), the commissioner shall maintain the confidentiality of the liquidity stress test results and supporting
11 disclosures and any liquidity stress test information received from an insurance holding company supervised by
12 the federal reserve board and non-U.S. group-wide supervisors.

13 (2) Neither the commissioner nor any person who receives documents, materials, or other information
14 while acting under the authority of the commissioner, or with whom the documents, materials, or other
15 information is shared under Title 33, chapter 2, part 4, and this section, may be required or permitted to testify
16 in a private civil action concerning any confidential documents, materials, or information subject to subsection
17 (1).

18 (3) To assist in the performance of the commissioner's duties, the commissioner:

19 (a) may, subject to subsection (3)(b), share documents, materials, or other information, including the
20 confidential and privileged documents, materials, or information subject to subsection (1), including proprietary
21 and trade secret documents and materials with other state, federal, and international regulatory agencies, with
22 the NAIC ~~and its affiliates and subsidiaries~~, and with any third-party consultants designated by the
23 commissioner, with state, federal, and international law enforcement authorities, including members of a
24 supervisory college. To receive the shared documents, materials, or other information, the recipient shall verify
25 in writing that the recipient has the legal authority to maintain confidentiality and agree in writing to maintain the
26 confidentiality and privileged status of the documents, materials, or other information.

27 (b) may share confidential and privileged documents, materials, or other information reported
28 pursuant to 33-2-1111(7) only with insurance regulators of states having statutes or regulations substantially

1 similar to subsection (1) and only if the respective insurance regulators have agreed in writing not to disclose
2 the documents, materials, or other information;

3 (c) may receive documents, materials, or other information, including otherwise confidential and
4 privileged documents, materials, or other information, including proprietary and trade-secret information, from
5 the NAIC and its affiliates and subsidiaries and from regulatory and law enforcement officials of other foreign or
6 domestic jurisdictions; and

7 (d) shall maintain as confidential or privileged any document, materials, or other information received
8 under subsection (3)(c) with notice or the understanding that the document, materials, or other information is
9 confidential or privileged under the laws of the jurisdiction that is the source of the document, materials, or
10 information.

11 (4) (a) The commissioner shall enter into written agreements with the NAIC and any third-party
12 consultant designated by the commissioner governing the sharing and use of information provided pursuant to
13 Title 33, chapter 2, part 4, and this section.

14 (b) An agreement with the NAIC under this subsection (4) must:

15 (i) specify procedures and protocols regarding the confidentiality and security of information shared
16 with the NAIC ~~and its affiliates and subsidiaries~~ or a third-party consultant designated by the commissioner
17 pursuant to Title 33, chapter 2, part 4, and this section, including procedures and protocols for sharing by the
18 NAIC with other state, federal, or international regulators; The agreement must provide that the recipient
19 agrees in writing to maintain the confidentiality and privileged status of the documents, materials or other
20 information and has verified in writing the legal authority to maintain confidentiality;

21 (ii) specify that ownership information shared with the NAIC or a third-party consultant ~~and its affiliates~~
22 ~~and subsidiaries~~ pursuant to Title 33, chapter 2, part 4, and this section remains with the commissioner and that
23 the NAIC's or a third-party consultant's, as designated by the commissioner, use of the information is subject to
24 the direction of the commissioner;

25 (iii) excluding documents, material, or information reported pursuant to 33-2-1111, prohibit the NAIC or
26 third-party consultant designated by the commissioner from storing the information shared pursuant to this
27 chapter in a permanent database after the underlying analysis is completed;

28 (iii) (iv) require prompt notice to be given to an insurer whose confidential information in the possession

1 of the NAIC or a third-party consultant designated by the commissioner pursuant to Title 33, chapter 2, part 4,
2 and this section is subject to a request or a subpoena to the NAIC or a third-party consultant designated by the
3 commissioner for disclosure or production; ~~and~~

4 ~~(iv)~~ (v) require the NAIC or a third-party consultant designated by the commissioner ~~and its affiliates~~
5 ~~and subsidiaries~~ to consent to intervention by an insurer in any judicial or administrative action in which the
6 NAIC or a third-party consultant designated by the commissioner ~~and its affiliates and subsidiaries~~ may be
7 required to disclose confidential information about the insurer that has been shared with the NAIC and its
8 affiliates and subsidiaries pursuant to Title 33, chapter 2, part 4, and this section; and

9 (vi) for documents, material, or information reporting pursuant to 33-2-1111(7)(c) in the case of an
10 agreement involving a third-party consultant, provide for notification of the identity of the consultant to the
11 applicable insurers.

12 (5) The sharing of information by the commissioner pursuant to Title 33, chapter 2, part 4, and this
13 section does not constitute a delegation of regulatory authority or rulemaking. The commissioner is solely
14 responsible for the administration, execution, and enforcement of the provisions of Title 33, chapter 2, part 4,
15 and this section.

16 (6) Disclosure to the commissioner of information under this section or as a result of sharing of
17 confidential information authorized under subsections (3) and (4) does not constitute a waiver of any applicable
18 privilege or claim of confidentiality related to the information obtained under Title 33, chapter 2, part 4, and this
19 section.

20 (7) Documents, materials, and other information in the possession or control of the NAIC or a third-
21 party consultant designated by the commissioner pursuant to Title 33, chapter 2, part 4, and this section are
22 confidential information as provided in 2-6-1002 and privileged, are not admissible in evidence in a private civil
23 action, and are not subject to subpoena or discovery.

24 (8) The group capital calculation and resulting group capital ratio required under 33-2-1111 and the
25 liquidity stress test along with its results and supporting disclosures required under 33-2-1111 are regulatory
26 tools for assessing group risks and capital adequacy and group liquidity risks, respectively, and are not
27 intended as a means to rank insurers or insurance holding company systems generally. Therefore, except as
28 otherwise may be required under the provisions of this title, the making, publishing, disseminating, circulating,

1 or placing before the public, or causing directly or indirectly to be made, published, disseminated, circulated, or
 2 placed before the public in a newspaper, magazine, or other publication, or in the form of a notice, circular,
 3 pamphlet, letter, or poster, or over any radio or television station or any electronic means of communication
 4 available to the public, or in any other way as an advertisement, announcement, or statement containing a
 5 representation or statement with regard to the group capital calculation, group capital ratio, the liquidity stress
 6 test results, or supporting disclosures for the liquidity stress test of any insurer or any insurer group, or of any
 7 component derived in the calculation by any insurer, broker, or other person engaged in any manner in the
 8 insurance business would be misleading and is therefore prohibited. However, if any materially false statement
 9 with respect to the group capital calculation, resulting group capital ratio, an inappropriate comparison of any
 10 amount to an insurer's or insurance group's group capital calculation or resulting group capital ratio, liquidity
 11 stress test result, supporting disclosures for the liquidity stress test, or an inappropriate comparison of any
 12 amount to an insurer's or insurance group's liquidity stress test result or supporting disclosures is published in
 13 any written publication and the insurer is able to demonstrate to the commissioner with substantial proof the
 14 falsity of such statement or the inappropriateness, as the case may be, then the insurer may publish
 15 announcements in a written publication if the sole purpose of the announcement is to rebut the materially false
 16 statement."

17
 18 **NEW SECTION. Section 4. Group-wide supervision of internationally active insurance groups.**

19 (1) (a) The commissioner is authorized to act as the group-wide supervisor for any internationally active
 20 insurance group in accordance with the provisions of this section. However, the commissioner may otherwise
 21 acknowledge another regulatory official as the group-wide supervisor where the internationally active insurance
 22 group:

23 (i) does not have substantial insurance operations in the United States;
 24 (ii) has substantial insurance operations in the United States, but not in this state; or
 25 (iii) has substantial insurance operations in the United States and this state, but the commissioner has
 26 determined pursuant to the factors set forth in subsections (2) and (6) that the other regulatory official is the
 27 appropriate group-wide supervisor.

28 (b) An insurance holding company system that does not otherwise qualify as an internationally active

1 insurance group may request that the commissioner make a determination or acknowledgment as to a group-
2 wide supervisor pursuant to this section.

3 (2) (a) In cooperation with other state, federal, and international regulatory agencies, the
4 commissioner will identify a single group-wide supervisor for an internationally active insurance group. The
5 commissioner may determine that the commissioner is the appropriate group-wide supervisor for an
6 internationally active insurance group that conducts substantial insurance operations concentrated in this state.
7 However, the commissioner may acknowledge that a regulatory official from another jurisdiction is the
8 appropriate group-wide supervisor for the internationally active insurance group. The commissioner shall
9 consider the following factors when making a determination or acknowledgment under this subsection (2):

10 (i) the place of domicile of the insurers within the internationally active insurance group that hold the
11 largest share of the group's written premiums, assets, or liabilities;

12 (ii) the place of domicile of the top-tiered insurers in the insurance holding company system of the
13 internationally active insurance group;

14 (iii) the location of the executive offices or largest operational offices of the internationally active
15 insurance group;

16 (iv) whether another regulatory official is acting or is seeking to act as the group-wide supervisor under
17 a regulatory system that the commissioner determines to be substantially similar to the system of regulation
18 provided under the laws of this state, or otherwise sufficient in terms of providing for group-wide supervision,
19 enterprise risk analysis, and cooperation with other regulatory officials; and

20 (v) whether another regulatory official acting or seeking to act as the group-wide supervisor provides
21 the commissioner with reasonably reciprocal recognition and cooperation.

22 (b) However, a commissioner identified under this section as the group-wide supervisor may
23 determine that it is appropriate to acknowledge another supervisor to serve as the group-wide supervisor. The
24 acknowledgment of the group-wide supervisor shall be made after consideration of the factors listed in
25 subsections (2)(a)(i) through (2)(a)(v) and shall be made in cooperation with and subject to the
26 acknowledgment of other regulatory officials involved with supervision of members of the internationally active
27 insurance group, and in consultation with the internationally active insurance group.

28 (3) Notwithstanding any other provision of law, when another regulatory official is acting as the group-

1 wide supervisor of an internationally active insurance group, the commissioner shall acknowledge that
2 regulatory official as the group-wide supervisor. However, in the event of a material change in the
3 internationally active insurance group that results in:

4 (a) the internationally active insurance group's insurers domiciled in this state holding the largest
5 share of the group's premiums, assets or liabilities; or

6 (b) this state being the place of domicile of the top-tiered insurers in the insurance holding company
7 system of the internationally active insurance group, the commissioner shall make a determination or
8 acknowledgment as to the appropriate group-wide supervisor for such an internationally active insurance group
9 pursuant to subsection (2).

10 (4) Pursuant to 33-2-1115 the commissioner is authorized to collect from any insurer registered
11 pursuant to 33-2-1111 all information necessary to determine whether the commissioner may act as the group-
12 wide supervisor of an internationally active insurance group or if the commissioner may acknowledge another
13 regulatory official to act as the group-wide supervisor. Prior to issuing a determination that an internationally
14 active insurance group is subject to group-wide supervision by the commissioner, the commissioner shall notify
15 the insurer registered pursuant to this section and the ultimate controlling person within the internationally
16 active insurance group. The internationally active insurance group has not less than 30 days to provide the
17 commissioner with additional information pertinent to the pending determination. The commissioner shall
18 publish in the Montana administrative register and on its internet website the identity of internationally active
19 insurance groups that the commissioner has determined are subject to group-wide supervision by the
20 commissioner.

21 (5) If the commissioner is the group-wide supervisor for an internationally active insurance group, the
22 commissioner is authorized to engage in any of the following group-wide supervision activities:

23 (a) assess the enterprise risks within the internationally active insurance group to ensure that:

24 (i) the material financial condition and liquidity risks to the members of the internationally active
25 insurance group that are engaged in the business of insurance are identified by management; and

26 (ii) reasonable and effective mitigation measures are in place;

27 (b) request, from any member of an internationally active insurance group subject to the
28 commissioner's supervision, information necessary and appropriate to assess enterprise risk, including but not

1 limited to information about the members of the internationally active insurance group regarding:

2 (i) governance, risk assessment, and management;

3 (ii) capital adequacy; and

4 (iii) material intercompany transactions;

5 (c) coordinate and, through the authority of the regulatory officials of the jurisdictions where members
6 of the internationally active insurance group are domiciled, compel development and implementation of
7 reasonable measures designed to ensure that the internationally active insurance group is able to timely
8 recognize and mitigate enterprise risks to members of such internationally active insurance group that are
9 engaged in the business of insurance;

10 (d) communicate with other state, federal and international regulatory agencies for members within
11 the internationally active insurance group and share relevant information subject to the confidentiality provisions
12 of 33-2-1116, through supervisory colleges as provided for in Title 33, chapter 2, part 11, or otherwise;

13 (e) enter into agreements with or obtain documentation from any insurer registered under 33-2-1111,
14 any member of the internationally active insurance group, and any other state, federal and international
15 regulatory agencies for members of the internationally active insurance group, providing the basis for or
16 otherwise clarifying the commissioner's role as group-wide supervisor, including provisions for resolving
17 disputes with other regulatory officials. Such agreements or documentation may not serve as evidence in any
18 proceeding that any insurer or person within an insurance holding company system not domiciled or
19 incorporated in this state is doing business in this state or is otherwise subject to jurisdiction in this state; and

20 (f) other group-wide supervision activities, consistent with the authorities and purposes enumerated
21 above, as considered necessary by the commissioner.

22 (6) If the commissioner acknowledges that another regulatory official from a jurisdiction that is not
23 accredited by the NAIC is the group-wide supervisor, the commissioner is authorized to reasonably cooperate,
24 through supervisory colleges or otherwise, with group-wide supervision undertaken by the group-wide
25 supervisor, provided that:

26 (a) the commissioner's cooperation is in compliance with the laws of this state; and

27 (b) the regulatory official acknowledged as the group-wide supervisor also recognizes and cooperates
28 with the commissioner's activities as a group-wide supervisor for other internationally active insurance groups

1 where applicable. Where such recognition and cooperation is not reasonably reciprocal, the commissioner is
2 authorized to refuse recognition and cooperation.

3 (7) The commissioner is authorized to enter into agreements with or obtain documentation from any
4 insurer registered under 33-2-1111, any affiliate of the insurer, and other state, federal and international
5 regulatory agencies for members of the internationally active insurance group, that provide the basis for or
6 otherwise clarify a regulatory official's role as group-wide supervisor.

7 (8) The commissioner may promulgate rules necessary for the administration of this section.

8 (9) A registered insurer subject to this section is liable for and shall pay the reasonable expenses of
9 the commissioner's participation in the administration of this section, including the engagement of attorneys,
10 actuaries and any other professionals and all reasonable travel expenses.

11

12 **NEW SECTION. Section 5. Codification instruction.** [Section 4] is intended to be codified as an
13 integral part of Title 33, chapter 2, part 11, and the provisions of Title 33, chapter 2, part 11, apply to [section 4].

14

- END -