

## SB 304 Study

Requirements for licensed insurers/Under HB 153/Current statutes:

### Licensing

**Company:** Companies must be granted a certificate of authority by the Montana State Auditor's Office before conducting business in the state. The application includes reporting requirements of financial stability, rates filings and forms that will be used. The application fee is \$1,900. Certificate of Authority is not required of the State Fund now. Under HB 153, a certificate of authority would be required, but with limited regulatory discretion for the SAO.

**Producer:** Before individuals who are not salaried employees of the company can sell, solicit or negotiate contracts of insurance, they must complete the license application process, pass a licensing examination, be appointed by the company they will represent and complete continuing education courses to renew their licenses biennially. State Fund does use licensed producers now, but appointments are not required. Producer appointments are required of licensed insurers.

**Adjusters:** Individual adjusters, those who are not salaried employees of the insurer must be licensed. Applicants will complete a licensing examination and pay a license application fee. State Fund adjusters as state employees are not now required to be licensed, however, most are.

### Supervision and Rehabilitation

Under HB 153, SAO could request supervision and rehabilitation of the District court under Section 3 (4) (b). The question is how would surplus/reserves be evaluated for the purposes of supervision and rehabilitation. Currently Supervision/Rehabilitation is not an issue. SAO, under supervision of the District Court can request Supervision/Rehabilitation, when surplus/reserves fall below a safe range.

### Receivership/Liquidation

Currently, receivership/liquidation statutes do not govern the State Fund. An authorized insurer is required to meet certain statutory requirements for financial solvency, hold reserves and account for surplus.

If the insurance commissioner receives notice from the Guaranty Association that an insurer cannot continue its business without harming the insured, or otherwise determines through financial analysis of the company, the commissioner may make a determination to petition the court to order supervision of the insurer. Under supervision the insurer has 60 days from the date of the supervision order to comply with the court ordered requirements. If the insurer fails to comply the commissioner may request that a rehabilitator or liquidator be appointed.

The commissioner will be ordered and appointed to take possession of the assets of the insurer and administer them under the general supervision of the court in an attempt to rehabilitate the company. The Guaranty Association may be called upon to pay covered claims because of the insolvency of the insurer. In the case of workers compensation claims the association must pay the full amount of any covered claim. If the insurer cannot be rehabilitated, a liquidation order may be issued.

If liquidation of the insurer is necessary the court will issue an order to liquidate the business and appoint the commissioner to liquidate the assets.

### Guaranty Fund

Licensed insurers do belong to the Montana Guaranty Association. The Association provides the mechanism for the payment of covered claims under certain insurance policies to avoid excessive delay in payment and to avoid financial loss to claimants or policyholders because of the insolvency of an insurer, to assist in the detection and prevention of insurer insolvencies and to provide an association to assess the cost of such protection among insurers.

The association will assess insurers amounts necessary to pay the obligations of the subsequent to insolvency. The expenses of handling covered claims during an insolvency and the cost of examinations under statute and other expenses authorized by statute. The assessments of each member are in proportion to the net direct written premiums for the preceding calendar year. No member insurer may be assessed in any year an amount greater than 2% of that member's net direct written premium. The State Fund is not a member of the Montana Guaranty Association.

### Examinations

The Commissioner shall examine the affairs, transactions, accounts, records and assets of each authorized insurer as often as the commissioner considers advisable. The commissioner shall examine each authorized insurer not less frequently than every 5 years.

### Premium Tax

Each insurer shall pay to the commissioner a tax upon the total direct premium income earned each year. A premium tax will be computed at the rate of  $2\frac{3}{4}\%$  of the net premium. The annual statement of premium income and tax must be filed with the commissioner by March 1 of each year.

### NAIC Filings

An annual statement filing is required on or before March 1 with a statement of the insurer's financial condition as of the preceding December 31. The statement must be completed in accordance with the annual statement instruction and the accounting practices and procedures manual of the national association of insurance commissioners. The statement must be accompanied by an actuarial opinion attesting to the adequacy of the insurer's reserves.

### Rates Filings

Premium rates are filed with the commissioner's office. The purpose of requiring an insurer to file rates with the office is to promote the public welfare by regulating insurance rates to the extent that they shall not be excessive, inadequate or unfairly discriminatory. A rate may not be held to be excessive unless the rate is unreasonably high for the insurance provided and a reasonable degree of competition does not exist in the area with respect to the classification to which the rate is applicable.



A rate may not be held to be inadequate unless the rate is unreasonably low for the insurance provided and the continued use of the rate endangers the solvency of the insurer using the rate. A rate may be considered unreasonably low for the insurance provided if it has the effect of destroying competition or creating a monopoly.

Unfair discrimination exists if, after allowing for practical limitations, price differentials fail to reflect equitably the differences in expected losses and expenses. A rate is not unfairly discriminatory because different premiums result for policyholders with different loss exposures or expense levels.

If the State Fund was regulated by the SAO the NCCI classification system would be used. While the State Fund is currently reporting losses to NCCI, the rates are neither approved or disapproved by the SAO.

### Forms Filings

Before an insurance policy, enrollment form, application form, printed rider or endorsement form can be delivered or issued for delivery in Montana, the form must have been filed with and approved by the commissioner. The filing must be made not less than 60 days in advance of delivery. Approval of the form may be withdrawn at any time by the commissioner after notice is issued and for cause. State Fund forms are currently filed for informational purposes at the SAO, but they are neither approved or disapproved for use.

### Fraud Investigations

Currently, the DOJ investigates charges of fraud by claimants. Under HB 153 that responsibility would remain at DOJ. Licensed insurers conduct some fraud investigations and SAO does also.

### Enforcement of MCA

State Fund is not under SAO insurance statutes, so at this point the State Auditor's Office has no enforcement authority. However if the fund would become private, SAO would have enforcement responsibilities. Under the requirements of HB 153, Title 33 would apply and SAO would share the enforcement responsibilities with the DOJ unless specifically exempted.

### Consumer Complaints

The State Auditor's Office Policy Holder's Services office receives 10-15 calls and about 10 files per year on workers compensation. If the state fund is privatized, the SAO will pick up the complaints now resolved by the Employee Relations Division at the DOL. SAO could see an increase to between 1,000 and 1,200 calls a year. An increase that great will require additional SAO Compliance Specialist FTE.

	<b>State Fund Requirements Current Operations</b>	<b>State Fund Requirements Under HB 153</b>	<b>State Fund Requirements for Licensed Insurers</b>
<b>Licensing</b>			
Company	No, certificate of authority is not required now	Yes but with no regulatory discretion for SAO	Yes
Producer	Only use licensed producers no appointments	Only use license producers no appointments	Yes, with a company appointment Yes unless salaried employees of the company
Adjusters	Not currently required but most are	No	
<b>Supervision/Rehabilitation</b>	No	SAO under supervision of Dist Court Section 3 (4) (b) of HB 153	SAO under supervision of the Dist Court
<b>Receivership/Liquidation</b>	No	No	Yes under supervision of the Dist Court
<b>Guaranty Fund</b>	No	No	Yes
<b>Examinations</b>			
Financial Solvency	Legislative Auditor	SAO	SAO
Accounting Standards	GAAP	GAAP or Statutory GAAP is implied	Statutory - 39-71-236, MCA
<b>Premium Tax</b>	No	Yes	Yes
<b>NAIC Filings</b>	No	Yes	Yes
<b>Rates Filings</b>	No	Filed by for information only neither approved or disapproved	Yes
<b>Form Filings</b>	No	Filed by for information only neither approved or disapproved	Yes
<b>Fraud Investigations</b>	Department of Justice Department of Justice	Department of Justice SAO/Dept Justice Divided	SAO
<b>Enforcement of MCA</b>	Title 33 compliance not required	Title 33 compliance applies	SAO Title 33 applies
<b>Consumer Complaints</b>	State Fund/DOL	State Fund/DOL	SAO