

SENATE BILL NO. 161
INTRODUCED BY R. LAIBLE
BY REQUEST OF THE STATE AUDITOR

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING CAPTIVE INSURANCE LAWS; ESTABLISHING A CAPTIVE INSURANCE REGULATORY AND SUPERVISION ACCOUNT; REVISING DEFINITIONS; EXPANDING THE DEFINITION OF "PURE CAPTIVE INSURANCE COMPANY" TO INCLUDE CONTROLLED UNAFFILIATED BUSINESS ENTITIES; PROVIDING FOR INVESTMENTS BY PROTECTED CELL CAPTIVE INSURANCE COMPANIES; REVISING LICENSING AND MINIMUM CAPITAL SURPLUS REQUIREMENTS; REVISING PROCEDURES FOR FORMING CAPTIVE INSURANCE COMPANIES; REVISING FILING AND EXAMINATION REQUIREMENTS FOR RISK RETENTION GROUPS; CLARIFYING TAX COMPUTATION FOR PROTECTED CELL CAPTIVE INSURANCE COMPANIES; SUBSTITUTING THE TERM "PROTECTED CELL CAPTIVE INSURANCE COMPANY" FOR "SPONSORED CAPTIVE INSURANCE COMPANY"; AND AMENDING SECTIONS 33-28-101, 33-28-102, 33-28-104, 33-28-105, 33-28-106, 33-28-107, 33-28-108, 33-28-201, 33-28-202, 33-28-205, 33-28-206, 33-28-207, 33-28-301, 33-28-302, 33-28-303, 33-28-304, AND 33-28-306, MCA."

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

Section 1. Section 33-28-101, MCA, is amended to read:

"33-28-101. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Affiliated company" means any company in the same corporate system as a parent, an industrial insured, or a member ~~organization~~ by virtue of common ownership, control, operation, or management.

(2) "Association" means any legal association of sole proprietorships, ~~corporations, partnerships, limited liability companies, or associations~~ or business entities that has been in continuous existence for at least 1 year unless the 1-year requirement is waived by the commissioner, ~~the member organizations~~ and the members of which collectively, or the association itself:

(a) owns, controls, or holds with power to vote all of the outstanding voting securities of an association captive insurance company incorporated as a stock insurer;

(b) has complete voting control over an association captive insurance company incorporated as a mutual

insurer; or

(c) constitutes all of the subscribers of an association captive insurance company formed as a reciprocal insurer.

(3) "Association captive insurance company" means any company that insures risks of the ~~member organizations of an association~~ members and their the affiliated companies of members.

(4) "Branch business" means any insurance business transacted by a branch captive insurance company in this state.

(5) "Branch captive insurance company" means any foreign captive insurance company licensed by the commissioner to transact the business of insurance in this state through a business unit with a principal place of business in this state.

(6) "Branch operations" means any business operations of a branch captive insurance company in this state.

(7) (a) "Business entity" means a corporation, limited liability company, partnership, limited partnership, limited liability partnership, or other legal entity formed by an organizational document.

(b) The term does not include a sole proprietor.

~~(7)~~(8) "Captive insurance company" means any pure captive insurance company, association captive insurance company, ~~sponsored protected cell~~ captive insurance company, or industrial insured captive insurance company formed or licensed under the provisions of this chapter.

(9) "Captive reinsurance company" means a captive insurance company licensed in this state that reinsures the risk ceded by any other insurer.

~~(8)~~(10) "Cash equivalent" means any short-term, highly liquid investment that is:

(a) readily convertible to known amounts of cash; and

(b) so near to its maturity that it presents insignificant risk of changes in value because of changes in interest rates. Only an investment with an original maturity of 3 months or less qualifies as a cash equivalent.

(11) (a) "Controlled unaffiliated business entity" means a business entity or sole proprietorship:

(i) that is not in a parent's corporate system consisting of the parent and affiliated companies;

(ii) that has an existing contractual relationship with the parent or an affiliated company; and

(iii) whose risks are managed by a pure captive insurance company.

(b) The commissioner may promulgate rules that further define a controlled unaffiliated business entity.

~~(9)~~(12) "Excess workers' compensation insurance" means, in the case of an employer that has insured or self-insured its workers' compensation risks in accordance with applicable state or federal law, insurance that

is in excess of a specified ~~per-incident~~ per-incident or aggregate limit established by the commissioner.

~~(10)~~(13) "Foreign captive insurance company" means any captive insurance company formed under the laws of any jurisdiction other than this state.

~~(11)~~(14) "Industrial insured" means an insured:

(a) who procures the insurance of any risk or risks by use of the services of a full-time employee acting as an insurance manager or buyer;

(b) whose aggregate annual premiums for insurance on all risks total at least \$25,000; and

(c) who has at least 25 full-time employees.

~~(12)~~(15) "Industrial insured captive insurance company" means any company that insures risks of the industrial insureds that comprise the industrial insured group and their affiliated companies.

~~(13)~~(16) "Industrial insured group" means any group ~~of industrial insureds that collectively~~ that meets either of the following:

(a) the group collectively:

~~(a)~~(i) owns, controls, or holds with power to vote all of the outstanding voting securities of an industrial insured captive insurance company incorporated as a stock insurer; or

~~(b)~~(ii) has complete voting control over an industrial insured captive insurance company incorporated as a mutual insurer; or

(b) the group is a risk retention group.

~~(14)~~(17) "Member organization" means a sole proprietorship, ~~corporation, partnership, or association~~ or business entity that belongs to an association.

(18) "Mutual insurer" means a business entity without capital stock and with a governing body elected by the policyholders.

(19) "Organizational document" means articles of incorporation, articles of organization, a partnership agreement, a subscribers' agreement, a charter, or any other document that establishes a business entity.

~~(15)~~(20) "Parent" means a ~~corporation, partnership~~ sole proprietorship, business entity, or individual that directly or indirectly owns, controls, or holds with power to vote more than 50% of the outstanding voting securities of a ~~pure~~ captive insurance company.

~~(16)~~(21) "Participant" means ~~an a sole proprietorship or business entity, as enumerated in 33-28-304,~~ and any affiliates ~~of the entity~~ that are insured by a ~~sponsored~~ protected cell captive insurance company in which the losses of the participant are limited through a participant contract to the participant's pro rata share of the assets of one or more protected cells identified in the participant contract.

~~(17)~~(22) "Participant contract" means a contract by which a ~~sponsored~~ protected cell captive insurance company insures the risks of a participant and limits the losses of each participant in the contract.

~~(18)~~(23) "Protected cell" means a separate account established by a ~~sponsored~~ protected cell captive insurance company formed or licensed under the provisions of this chapter, in which assets are maintained for one or more participants in accordance with the terms of one or more participant contracts to fund the liability of the ~~sponsored~~ protected cell captive insurance company with respect to the participants as set forth in the participant contracts.

(24) "Protected cell captive insurance company" means any captive insurance company:

(a) in which the minimum capital and surplus required by applicable law are provided by one or more sponsors;

(b) that is formed or licensed under the provisions of this chapter;

(c) that insures the risks of separate participants through participant contracts; and

(d) that funds its liability to each participant through one or more protected cells and segregates the assets of each protected cell from the assets of other protected cells and from the assets of the protected cell captive insurance company's general account.

~~(19)~~(25) "Pure captive insurance company" means any company that insures risks of its parent and affiliated companies and controlled unaffiliated business entities.

(26) "Risk retention group" means a captive insurance risk retention group formed under the laws of this chapter and pursuant to Title 33, chapter 11.

(27) "Sole proprietorship" means an individual doing business in a noncorporate form.

~~(20)~~(28) "Sponsor" means any entity that meets the requirements of 33-28-301 and 33-28-302 and is approved by the commissioner to provide all or part of the capital and surplus required by the applicable law and to organize and operate a ~~sponsored~~ protected cell captive insurance company.

~~(21)~~ "Sponsored captive insurance company" means any captive insurance company:

~~———— (a) in which the minimum capital and surplus required by applicable law are provided by one or more sponsors;~~

~~———— (b) that is formed or licensed under the provisions of this chapter;~~

~~———— (c) that insures the risks of separate participants through participant contracts; and~~

~~———— (d) that funds its liability to each participant through one or more protected cells and segregates the assets of each protected cell from the assets of other protected cells and from the assets of the sponsored captive insurance company's general account."~~

NEW SECTION. Section 2. Captive insurance regulatory and supervision account. (1) There is an account in the state special revenue fund called the captive insurance regulatory and supervision account, which may be referred to as the captive account.

(2) The purpose of the captive account is to provide the financial means for the commissioner to administer this chapter and for reimbursement of reasonable expenses incurred in promoting captive insurance in this state.

(3) (a) Ten percent of the premium tax collected under 33-28-201 and all fees and assessments received by the commissioner pursuant to the administration of this chapter must be deposited in the captive account.

(b) All fines and administrative penalties collected pursuant to this chapter must be deposited in the general fund.

(4) All payments from the captive account for the maintenance of staff and associated expenses, including necessary contractual services, may only be disbursed from the state treasury upon warrants issued by the commissioner, after receipt by the commissioner of proper documentation regarding services rendered and expenses incurred.

(5) At the end of each fiscal year, the balance in the captive account must be transferred to the general fund.

NEW SECTION. Section 3. Investments by protected cell captive insurance companies. The assets of two or more protected cells may be combined for the purposes of investment by a protected cell captive insurance company, and the combination of the protected cells may not be construed as defeating the segregation of the assets for accounting or other purposes.

Section 4. Section 33-28-102, MCA, is amended to read:

"33-28-102. Licensing -- authority. (1) A captive insurance company, when permitted by its ~~articles of incorporation, charter, or other~~ organizational document, may apply to the commissioner for a license to provide property insurance, casualty insurance, life insurance, disability income insurance, and health insurance coverage or a group health plan as defined in 33-22-140, except that:

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

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

(c) an association captive insurance company may not insure any risks other than those of the ~~member organizations of its association or their~~ members or affiliated companies of members;

(d) a captive insurance company or a branch captive insurance company may not:

(i) provide personal lines of insurance, including but not limited to motor vehicle or homeowner's insurance coverage or any component of those coverages;

(ii) accept or cede reinsurance except as provided in 33-28-203; ~~or~~

(iii) provide health insurance coverage; or a group health plan unless the captive insurance company or branch captive insurance company is ~~a pure captive insurance company only providing health insurance coverage or a group health plan for the parent company and its affiliated companies;~~ and or

(iv) write workers' compensation insurance on a direct basis; and

(e) a ~~sponsored~~ protected cell captive insurance company may not insure any risks other than those of its ~~participants~~ participant affiliated companies and controlled unaffiliated business entities.

(2) A captive insurance company may not ~~do~~ write any insurance business ~~in this state~~ unless:

(a) it first obtains from the commissioner a license authorizing it to do insurance business in this state;

(b) its board of directors or a reciprocal insurer's subscribers' advisory committee holds at least one meeting each year in this state; ~~and~~

(c) it maintains its principal place of business in this state; and

(d) (i) it appoints a registered agent to accept service of process and to otherwise act on its behalf in this state;

(ii) the name and contact information and any subsequent changes regarding the registered agent are filed with the commissioner; and

(iii) it agrees that whenever the registered agent cannot be found with reasonable diligence, the commissioner's office may act as an agent of the captive insurance company with respect to any action or proceeding and may be served in accordance with 33-1-603.

(3) (a) Before receiving a license, a captive insurance company shall:

(i) with respect to a captive insurance company formed as a corporation:

(A) file with the commissioner a certified copy of its charter and bylaws, a statement under oath of its president and secretary showing its financial condition, and any other statements or documents required by the commissioner; and

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

(ii) with respect to a captive insurance company formed as a reciprocal insurer:

(A) file with the commissioner a certified copy of the power of attorney of its attorney-in-fact, a certified copy of its subscribers' agreement, a statement under oath of its attorney-in-fact showing its financial condition, and any other statements or documents required by the commissioner; and

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

(b) In the event of any subsequent material change in any of the items in the description provided for in subsection (3)(a), the captive insurance company shall submit to the commissioner for approval an appropriate revision and may not offer any additional kinds of insurance until a revision of the description is approved by the commissioner. The captive insurance company shall inform the commissioner of any change in rates within 30 days of the adoption of the change.

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

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

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

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

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

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

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

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

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

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

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

(e) Information submitted pursuant to this subsection (3) must remain confidential and may not be made public by the commissioner or an employee or agent of the commissioner without the written consent of the company, except that:

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

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

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

(b) The provisions of Title 33, chapter 1, part 4, apply to examinations, investigations, and processing conducted under the authority of this section. In addition, each captive insurance company shall pay a license fee for the year of registration and a renewal fee for each subsequent year of \$300.

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

Section 5. Section 33-28-104, MCA, is amended to read:

"33-28-104. Minimum capital surplus -- letter of credit. (1) A captive insurance company may not be issued a license unless it possesses and maintains unimpaired paid-in capital and surplus of:

(a) in the case of a pure captive insurance company, not less than \$250,000;

(b) in the case of an industrial insured captive insurance company, not less than \$500,000;

(c) in the case of an association captive insurance company, not less than \$750,000;

(d) in the case of a ~~sponsored~~ protected cell captive insurance company, not less than ~~\$1 million~~ \$500,000, ~~or~~. However, if the protected cell captive insurance company does not assume any risks, the risks insured by the protected cells are homogenous, and if there are not more than 10 cells, the commissioner may reduce the amount required in this subsection (1)(d) to an amount not less than \$250,000.

(e) (i) in the case of a branch captive insurance company, not less than the applicable amount of capital and surplus required in subsections (1)(a) through (1)(d), as determined based upon the organizational form of the foreign captive insurance company; and

(ii) the minimum capital and surplus must be jointly held by the commissioner and the branch captive insurance company in a bank of the federal reserve system approved by the commissioner; or

(f) in the case of a captive reinsurance company, not less than 50% of the capital that would be required for that type of captive reinsurance company.

(2) The commissioner may require additional capital and surplus based upon the type, volume, and nature of insurance business transacted.

(3) Capital and surplus may be in the form of cash, cash equivalent, or an irrevocable letter of credit issued by a bank chartered by the state of Montana or a member bank of the federal reserve system and approved by the commissioner.

~~(4) Despite the requirements of subsection (1), a captive insurance company organized as a reciprocal insurer under this chapter may not be issued a license unless it possesses and maintains unimpaired paid-in capital and surplus of \$1 million.~~

~~—— (5) In the case of a branch captive insurance company, security in an amount not less than the minimum capital and surplus required in this section must be jointly held by the commissioner and the branch captive insurance company in a bank of the federal reserve system approved by the commissioner."~~

Section 6. Section 33-28-105, MCA, is amended to read:

"33-28-105. Formation of captive insurance companies. (1) A ~~pure~~ captive insurance company ~~or a sponsored captive insurance company~~ must be incorporated as a stock insurer with its capital divided into shares and held by the stockholders formed or organized as a business entity as provided in this chapter.

(2) An association captive insurance company or an industrial insured captive insurance company may be:

(a) incorporated as a stock insurer with its capital divided into shares and held by the stockholders;

(b) incorporated as a mutual insurer without capital stock, the governing body of which is elected by the ~~member organizations~~ members of its association or associations; or

(c) organized as a reciprocal insurer under Title 33, chapter 5.

(3) A captive insurance company incorporated or organized in this state may not have less than three incorporators, at least one of whom must be a resident of this state.

(4) (a) In the case of a captive insurance company formed as a ~~corporation~~ business entity and before the ~~articles of incorporation~~ organizational documents are transmitted to the secretary of state, the ~~incorporators~~ organizers shall file a copy of the proposed ~~articles of incorporation~~ organizational documents and a petition with the commissioner requesting the commissioner to issue a certificate that finds that the establishment and maintenance of the proposed ~~corporation~~ business entity will promote the general good of the state. In reviewing the petition, the commissioner shall consider:

(i) the character, reputation, financial standing, and purposes of the ~~incorporators~~ organizers;

(ii) the character, reputation, financial responsibility, insurance experience, and business qualifications of the any officers and directors; and

(iii) any other factors that the commissioner considers appropriate.

(b) If the commissioner does not issue a certificate or finds that the proposed ~~articles of incorporation~~ organizational documents of the captive insurance company do not meet the requirements of the applicable laws, including but not limited to 33-2-112, the commissioner shall refuse to approve the draft of the ~~articles of incorporation~~ organizational documents and shall return the draft to the proposed ~~incorporators~~ organizers, together with a written statement explaining the refusal.

(c) If the commissioner issues a certificate and approves the draft ~~articles of incorporation~~ organizational documents, the commissioner shall forward the certificate and an approved draft of ~~articles of incorporation~~ organizational documents to the proposed ~~incorporators~~ organizers. The ~~incorporators~~ organizers shall prepare two sets of the approved ~~articles of incorporation~~ organizational documents and shall file one set of ~~articles of incorporation~~ with the secretary of state as required by the applicable law and one set with the commissioner.

(5) The capital stock of a captive insurance company incorporated as a stock insurer may be authorized with no par value.

(6) (a) At least one of the members of the board of directors of a captive insurance company must be a resident of this state.

(b) In the case of a captive insurance company formed as a limited liability company, at least one of the managers must be a resident of the state.

(c) In case of a reciprocal insurer, at least one of the members of the subscribers' advisory committee must be a resident of the state.

(7) (a) A captive insurance company formed as a corporation or another business entity has the privileges and is subject to the provisions of general corporation law or the laws governing other business entities, as well as the applicable provisions contained in this chapter.

(b) In the event of conflict between the provisions of general corporation law or the laws governing other business entities and this chapter, the provisions of this chapter control.

(8) (a) With respect to a captive insurance company formed as a reciprocal insurer, the organizers shall petition and request that the commissioner issue a certificate that finds that the establishment and maintenance of the proposed association will promote the general good of the state. In reviewing the petition, the commissioner shall consider:

(i) the character, reputation, financial standing, and purposes of the organizers;

(ii) the character, reputation, financial responsibility, insurance experience, and business qualifications of the attorney-in-fact; and

(iii) any other factors that the commissioner considers appropriate.

(b) The commissioner may either approve the petition and issue the certificate or reject the petition in a written statement of the reasons for the rejection.

(c) (i) A captive insurance company formed as a reciprocal insurer has the privileges and is subject to the provisions of Title 33, chapter 5, in addition to the applicable provisions of this chapter. If there is a conflict between Title 33, chapter 5, and this chapter, the provisions of this chapter control.

~~(d)~~(ii) The subscribers' agreement or other organizing document of a captive insurance company formed as a reciprocal insurer may authorize a quorum of a subscribers' advisory committee to consist of at least one-third of the number of its members.

(d) A captive insurance company formed as a risk retention group has the privileges and is subject to the provisions of Title 33, chapter 11, and this chapter. If there is a conflict between Title 33, chapter 11, and this chapter, the provisions of this chapter prevail.

(9) Except as provided in 33-28-306, the provisions of Title 33, chapter 3, pertaining to mergers, consolidations, conversions, mutualizations, and voluntary dissolutions; ~~and redemptions~~ apply in determining the procedures to be followed by captive insurance companies in carrying out any of those transactions.

(10) (a) With respect to a branch captive insurance company, the foreign captive insurance company

shall petition and request that the commissioner issue a certificate that finds that, after considering the character, reputation, financial responsibility, insurance experience, and business qualifications of the officers and directors of the foreign captive insurance company, the licensing and maintenance of the branch operation will promote the general good of the state. The foreign captive insurance company ~~may~~ shall apply to the secretary of state for a certificate of authority to transact business in this state after the commissioner's certificate is issued.

(b) A branch captive insurance company established pursuant to the provisions of this chapter to write in this state only insurance or reinsurance of the employee benefit business of its parent and affiliated companies is subject to provisions of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001, et seq. In addition to the general provisions of this chapter, the provisions of this section apply to branch captive insurance companies.

(c) A branch captive insurance company may not do any insurance business in this state unless it maintains the principal place of business for its branch operations in this state."

Section 7. Section 33-28-106, MCA, is amended to read:

"33-28-106. Dividends. (1) A captive insurance company may not pay a dividend out of, or other distribution with respect to, capital or surplus ~~in excess of the limitations set forth in 33-2-1114~~ without the prior approval of the commissioner.

(2) Approval of an ongoing plan for the payment of dividends or other distributions must be conditioned upon retention, at the time of each payment, of capital surplus in excess of the amounts specified by or determined in accordance with formulas approved by the commissioner."

Section 8. Section 33-28-107, MCA, is amended to read:

"33-28-107. Reports and statements. (1) A captive insurance company is not required to make an annual report except as provided in this section.

(2) (a) ~~On~~ Except as provided in subsection (2)(b), on or before March 1 of each year, each captive insurance company shall submit to the commissioner a report of its financial condition in a form and manner as required by the commissioner, verified by oath of two of its executive officers.

(b) A pure captive insurance company, branch captive insurance company, or industrial insured captive company, excluding risk retention groups, may make written application for filing the required report on a fiscal yearend basis. If an alternative reporting date is granted:

(i) the required report is due 60 days after fiscal yearend; and

(ii) in order to provide sufficient information to support the premium tax return, a pure captive insurance company or industrial insured insurance company shall file a report acceptable to the commissioner prior to March 1 of each year for the prior calendar yearend.

~~(b)~~(c) Each captive insurance company shall report using generally accepted accounting principles, unless the commissioner requires the use of statutory accounting principles, with any necessary or useful modifications or additions required by the commissioner. The commissioner may also require the report to be supplemented by additional information.

~~(e)~~(d) On or before March 1 of each year, each branch captive insurance company shall submit to the commissioner a copy of all reports and statements required to be filed under the laws in which the foreign captive insurance company is formed, verified by oath of two of its executive officers. If the commissioner is satisfied that the annual report filed by the foreign captive insurance company in its domiciliary jurisdiction provides adequate information concerning the financial condition of the foreign captive insurance company, the commissioner may waive the requirement for completion of the captive annual statement for business written in the foreign jurisdiction.

(3) The commissioner shall consider financial statements filed pursuant to this section as confidential.

(4) (a) Risk retention groups shall file reports and statements in accordance with Title 33, chapter 2, part 7, except that a risk retention group:

(i) may file using generally accepted accounting principles; and

(ii) the filing may include letters of credit that are established, issued, or confirmed by a bank chartered in this state, a member of the federal reserve system, or a bank chartered by another state if that state-chartered bank is acceptable to the commissioner.

(b) The filings are required on an annual and quarterly basis."

Section 9. Section 33-28-108, MCA, is amended to read:

"33-28-108. Examinations and investigations. (1) (a) At least once in 3 years, or more frequently if the commissioner considers it prudent, the commissioner or some competent person appointed by the commissioner shall visit each captive insurance company and thoroughly inspect and examine its affairs to ascertain its financial condition, its ability to fulfill its obligations, and whether it has complied with the provisions of this chapter.

(b) The commissioner, upon application and in the commissioner's discretion, may enlarge the 3-year period to 5 years if the captive insurance company is:

(i) subject to a comprehensive annual audit during the 5-year period of a scope satisfactory to the commissioner; and

(ii) the audit is conducted by independent auditors approved by the commissioner.

(c) The expenses and charges of the examination must be paid to the commissioner by the company or companies examined.

(2) The provisions of Title 33, chapter 1, part 4, apply to examinations conducted under this section.

(3) Except as provided in subsection (4), all examination reports, preliminary examination reports or results, working papers, recorded information, documents, and their copies produced by, obtained by, or disclosed to the commissioner or any other person in the course of an examination made under this section are confidential, are not subject to subpoena, and may not be made public by the commissioner or an employee or agent of the commissioner without the written consent of the company or upon court order.

(4) (a) Subsection (3) does not prevent the commissioner from using information obtained pursuant to this section in furtherance of the commissioner's regulatory authority under Title 33. The commissioner may, in the commissioner's discretion, grant access to information obtained pursuant to this section to public officers having jurisdiction over the regulation of insurance in any other state or country or to law enforcement officers of this state or any other state or agency of the federal government at any time, as long as the officers receiving the information agree in writing to hold it in a manner consistent with this section.

(b) Risk retention group reports produced pursuant to the examination requirements of this section are public writings as defined in 2-6-101.

(5) ~~(a)~~ Except as provided in subsection ~~(5)(b)~~ (6), the provisions of this section apply to all business written by a captive insurance company.

~~(b)(6)~~ The examination for a branch captive insurance company may only be of branch business and branch operations if the branch captive insurance company has satisfied the requirements of 33-28-107~~(2)(c)~~(2)(d) to the satisfaction of the commissioner.

(7) As a condition of licensure of a branch captive insurance company, the foreign captive insurance company shall grant authority to the commissioner for examination of the affairs of the foreign captive insurance company in the jurisdiction in which the foreign captive insurance company is formed."

Section 10. Section 33-28-201, MCA, is amended to read:

"33-28-201. Tax on premiums collected. (1) (a) Each captive insurance company shall pay to the commissioner, on or before March 1 of each year, a tax on the direct premiums collected or contracted for on

policies or contracts of insurance written by the captive insurance company during the year ending December 31, after deducting from the direct premiums subject to the tax the amounts paid to policyholders as return premiums, including dividends on unabsorbed premiums or premium deposits returned or credited to policyholders.

(b) The tax on direct premiums collected in this state must be calculated as follows:

- (i) 0.4% on the first \$20 million;
- (ii) 0.3% on the next \$20 million;
- (iii) 0.2% on the next \$20 million; and
- (iv) 0.075% on each subsequent dollar collected.

(2) (a) Each captive insurance company shall pay to the commissioner on or before March 1 of each year a tax on assumed reinsurance premiums.

(b) A reinsurance tax does not apply to premiums for risks or portions of risks that are subject to taxation on a direct basis pursuant to subsection (1).

(c) A reinsurance premium tax is not payable in connection with the receipt of assets in exchange for the assumption of loss reserves and other liabilities of another insurer under common ownership and control if the transaction is part of a plan to discontinue the operations of the other insurer and if the intent of the parties to the transaction is to renew or maintain the business with the captive insurance company.

(d) The amount of the reinsurance tax must be calculated as follows:

- (i) 0.225% on the first \$20 million of assumed reinsurance premiums;
- (ii) 0.150% on the next \$20 million of assumed reinsurance premiums; and
- (iii) 0.050% on each subsequent dollar of assumed reinsurance premiums.

(3) (a) If the aggregate taxes to be paid by a captive insurance company calculated under subsections (1) and (2) amount to less than \$5,000 in any year, the captive insurance company shall pay a tax of \$5,000 for that year.

(b) Aggregate taxes to be paid by a captive insurance company under this section may not exceed \$100,000 in any year.

(c) Each protected cell in a protected cell captive insurance company must be considered separately in determining the aggregate tax to be paid by the protected cell captive insurance company. If the protected cell captive insurance company insures any risks in addition to the protected cells, the determination of the aggregate tax to be paid by the protected cell captive insurance company must also include the premium on those risks.

(4) Two or more captive insurance companies under common ownership and control must be taxed as

though they were a single captive insurance company.

(5) For the purposes of this section, "common ownership and control" means:

(a) in the case of stock corporations, the direct or indirect ownership of 80% or more of the outstanding voting stock of two or more corporations by the same shareholder or shareholders; and

(b) in the case of mutual ~~corporations~~ insurers, the direct or indirect ownership of 80% or more of the surplus and the voting power of two or more ~~corporations~~ insurers by the same member or members.

(6) Only the branch business of a branch captive insurance company is subject to taxation under the provisions of this section.

(7) The tax provided for in this section must be calculated on an annual basis notwithstanding policies or contracts of insurance or contracts of reinsurance issued on a multiyear basis. In the case of multiyear policies or contracts, the premium must be prorated for the purposes of determining the tax."

Section 11. Section 33-28-202, MCA, is amended to read:

"33-28-202. Legal investments. (1) An industrial insured captive insurance company, ~~and an association captive insurance company, and a risk retention group~~ shall comply with the investment requirements contained in Title 33, chapter 12, and the rules promulgated in accordance with these provisions. ~~Notwithstanding any other provision of this title, the~~ The commissioner may approve the use of alternative reliable methods of valuation and rating.

(2) A pure captive insurance company is not subject to any restrictions on allowable investments, except that the commissioner may prohibit or limit any investment that threatens the solvency or liquidity of the company.

(3) Only a pure captive insurance company may make loans to its parent company or affiliates. Loans to a parent company or any affiliate may not be made without prior written approval of the commissioner and must be evidenced by a note in a form approved by the commissioner. Loans of minimum capital and surplus funds required by 33-28-104 are prohibited."

Section 12. Section 33-28-205, MCA, is amended to read:

"33-28-205. Exemption from compulsory organizations. A captive insurance company may not join or contribute financially to any plan, pool, association, or guaranty or insolvency fund in this state, and a captive insurance company, its insureds, its parent, any affiliated company, or any member ~~organization~~ of an association may not receive any benefit from the plan, pool, association, or guaranty or insolvency fund for claims arising out of the operations of the captive insurance company."

Section 13. Section 33-28-206, MCA, is amended to read:

"33-28-206. Rules. The commissioner may adopt rules necessary to implement the provisions of this chapter. The rules may include but are not limited to rules relating to forms, payment of fees, licensing, capital and surplus, formation of companies, reports, examinations, investigations, redomestications, risk retention groups, risk-based capital and holding company systems, letters of credit, risks managed by pure captive insurance companies, standards to ensure that parent or affiliated companies are able to exercise control of the risk management function of any controlled unaffiliated entities to be insured by the pure captive insurance companies, the use of deductible reimbursement with workers compensation, and suspension and revocation of licenses."

Section 14. Section 33-28-207, MCA, is amended to read:

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

(a) the definitions of property insurance provided in 33-1-210, casualty insurance provided in 33-1-206, life insurance provided in 33-1-208, health insurance coverage and group health plans provided in 33-22-140, and disability income insurance provided in 33-1-235;

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

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

(d) the provisions of 33-1-603, 33-18-201, 33-18-203, 33-18-205, and 33-18-242.

(2) This chapter may not be construed as exempting:

~~(a)~~ a captive insurance company, its parent, or affiliated companies from compliance with the laws governing workers' compensation insurance; ~~or~~

~~(b)~~ a captive insurance company that is a risk retention group from complying with the provisions of Title 33, chapter 14.

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

~~(3)~~(4) Except as expressly provided in this chapter, the provisions of Title 33 do not apply to captive insurance companies."

Section 15. Section 33-28-301, MCA, is amended to read:

"33-28-301. Sponsored Protected cell captive insurance company. (1) One or more sponsors may

form a ~~sponsored~~ protected cell captive insurance company.

(2) A ~~sponsored~~ protected cell captive insurance company formed or licensed under the provisions of this chapter may establish and maintain one or more protected cells to insure risks of one or more participants, subject to the following conditions:

(a) The shareholders of the ~~sponsored~~ protected cell captive insurance company must be limited to its participants and sponsors.

(b) Each protected cell must be accounted for separately on the books and records of the ~~sponsored~~ protected cell captive insurance company to reflect the financial condition and result of operations of the protected cell, including but not limited to the net income or loss, dividends or other distributions to participants, and any other factor provided in the participant contract or required by the commissioner.

(c) The assets of a protected cell may not be chargeable with liabilities arising from any other insurance business of the ~~sponsored~~ protected cell captive insurance company.

(d) A sale, exchange, or other transfer of assets may not be made by a ~~sponsored~~ protected cell captive insurance company among any of its protected cells without the consent of the participants of each affected protected cell.

(e) A sale, exchange, transfer of assets, dividend, or distribution may not be made from a protected cell to a sponsor or a participant without the commissioner's prior written approval, which may not be given if the sale, exchange, transfer, dividend, or distribution would result in insolvency or impairment with respect to the protected cell.

(f) Each ~~sponsored~~ protected cell captive insurance company shall file annually with the commissioner any financial reports required by the commissioner and shall include, without limitation, accounting statements detailing the financial experience of each protected cell.

(g) Each ~~sponsored~~ protected cell captive insurance company shall notify the commissioner in writing within 20 business days from the time that a protected cell has become impaired or insolvent or is otherwise unable to meet its claim or expense obligations.

(h) A participant contract may not take effect without the commissioner's prior written approval.

(i) An addition of each new protected cell or the withdrawal of any participant of an existing protected cell constitutes a change in the business plan of the ~~sponsored~~ protected cell captive insurance company and may not be effective without the commissioner's prior written approval.

(j) The business written by a ~~sponsored~~ protected cell captive insurance company, with respect to each cell, must be:

(i) fronted by an insurance company licensed under the laws of any state;

(ii) reinsured by a reinsurer authorized or approved by the commissioner; or

(iii) secured by a trust fund in the United States for the benefit of policyholders and claimants, which must be funded by an irrevocable letter of credit or other asset that is acceptable to the commissioner, and with the following requirements:

(A) the amount of the security provided by the trust fund may not be less than the reserves associated with the liabilities that are not fronted or reinsured, including but not limited to reserves for losses that are allocated for loss adjustment expenses, incurred but not reported losses, and unearned premiums for business written through the participant's protected cell;

(B) the commissioner may require the ~~sponsored~~ protected cell captive insurance company to increase the funding of any trust;

(C) if the form of security in the trust is a letter of credit, the letter of credit must be established, issued, or confirmed by a bank chartered in this state, a member of the federal reserve system, or a bank chartered by another state if that state-chartered bank is acceptable to the commissioner; and

(D) the trust and trust instrument must be in a form and with terms approved by the commissioner."

Section 16. Section 33-28-302, MCA, is amended to read:

"33-28-302. Qualification of sponsors. A sponsor of a ~~sponsored~~ protected cell captive insurance company must be an insurer licensed under the laws of any state, a reinsurer licensed under the laws of any state, a captive insurance company formed or licensed under this chapter, or an insurance producer licensed under chapter 17 of this title and approved by the commissioner."

Section 17. Section 33-28-303, MCA, is amended to read:

"33-28-303. Delinquency of ~~sponsored~~ protected cell captive insurance company. If delinquency proceedings have been taken against a ~~sponsored~~ protected cell captive insurance company:

(1) the assets of a protected cell may not be used to pay any expenses other than those attributable to the protected cell; and

(2) the capital and surplus of the ~~sponsored~~ protected cell captive insurance company must be available at all times to pay expenses of or claims against the ~~sponsored~~ protected cell captive insurance company."

Section 18. Section 33-28-304, MCA, is amended to read:

"33-28-304. Participants in ~~sponsored~~ protected cell captive insurance companies. (1) ~~An association, corporation, limited liability company, partnership, trust, or other~~ A business entity may be a participant in a ~~sponsored~~ protected cell captive insurance company.

(2) A sponsor may be a participant in a ~~sponsored~~ protected cell captive insurance company.

(3) A participant is not required to be a shareholder of a ~~sponsored~~ protected cell captive insurance company or its affiliate.

(4) A participant shall insure only its own risks through a ~~sponsored~~ protected cell captive insurance company."

Section 19. Section 33-28-306, MCA, is amended to read:

"33-28-306. Conversion to or merger with reciprocal insurer. (1) An association captive insurance company or industrial insured group formed as a stock or mutual ~~corporation~~ insurer may be converted to or merged with a reciprocal insurer in accordance with the provisions of this section.

(2) A plan for conversion or merger must:

(a) be fair and equitable to the shareholders, in the case of a stock insurer, or the policyholders, in the case of a mutual insurer; and

(b) provide for the purchase of the shares of any nonconsenting shareholder of a stock insurer or the policyholder interest of any nonconsenting policyholder of a mutual insurer.

(3) In order to convert to a reciprocal insurer, the conversion must be accomplished under a reasonable plan and procedure approved by the commissioner. The commissioner may not approve the plan unless it:

(a) provides for a hearing upon notice to the insurer, directors, officers, and stockholders or policyholders who have the right to appear at the hearing, unless the commissioner waives or modifies the requirements for the hearing;

(b) provides for the conversion of the existing stockholder or policyholder interests into subscriber interests in the resulting reciprocal insurer proportionate to stockholder or policyholder interests;

(c) (i) in the case of a stock insurer, is approved, by a majority of the shareholders who are entitled to vote and who are represented at a regular or special meeting at which a quorum is present either in person or by proxy; or

(ii) in the case of a mutual insurer, by a majority of the voting interests of the policyholders who are represented at a regular or special meeting at which a quorum is present either in person or by proxy; and

(d) meets the requirements of 33-28-105.

(4) If the commissioner approves a plan of conversion, the certificate of authority for the converting insurer must be amended to state that it is a reciprocal insurer. The conversion is effective and the corporate existence of the converting entity ceases to exist ~~upon~~ on the date on which the amended certificate is issued to the attorney-in-fact of the reciprocal insurer. The resulting reciprocal insurer shall notify the secretary of state of the conversion.

(5) The commissioner may not approve a plan for a merger unless it:

(a) meets the requirements of:

(i) 33-3-217, with respect to the merger with a captive stock insurer; or

(ii) 33-3-218, with respect to the merger with a captive mutual insurer; and

(b) meets the requirements of 33-28-105."

NEW SECTION. Section 20. Codification instruction. (1) [Section 2] is intended to be codified as an integral part of Title 33, chapter 28, part 1, and the provisions of Title 33, chapter 28, part 1, apply to [section 2].

(2) [Section 3] is intended to be codified as an integral part of Title 33, chapter 28, part 3, and the provisions of Title 33, chapter 28, part 3, apply to [section 3].

NEW SECTION. Section 21. Directions to code commissioner. (1) Section 33-28-305 is intended to be renumbered and codified as an integral part of Title 33, chapter 28, part 1.

(2) In any enacted legislation that refers to a sponsored captive insurance company, the code commissioner shall change the reference to a protected cell captive insurance company.

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