1 HOUSE BILL NO. 125
2 INTRODUCED BY H. KLOCK
3 BY REQUEST OF THE STATE AUDITOR
4
5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING SECURITIES AND INSURANCE LAWS;
6 PROVIDING CONSISTENCY WITH THE MONTANA ADMINISTRATIVE PROCEDURE ACT FOR JUDICIAL
7 REVIEW OF A SECURITIES COMMISSIONER'S ORDER; INCLUDING CONFIDENTIAL DOCUMENTS
8 RECEIVED FROM ANOTHER STATE AGENCY AS AMONG THOSE MAINTAINED AS CONFIDENTIAL BY THE
9 INSURANCE COMMISSIONER; REMOVING REGULATION OF EXCESS DEPOSITS BY INSURERS;
10 APPLYING RISK-BASED CAPITAL REPORTING REQUIREMENTS TO CAPTIVE RISK RETENTION GROUPS;
11 INCLUDING A TREND TEST FOR RISK-BASED CAPITAL REPORTING FOR PROPERTY AND CASUALTY
12 INSURERS; REVISING THE SMALL BUSINESS HEALTH INSURANCE PURCHASING POOL AND TAX
13 CREDIT PROGRAM; REVISING LAWS RELATED TO CAPTIVE INSURANCE COMPANIES; ELIMINATING A
14 PENALTY PROVISION; AMENDING SECTIONS 15-30-2368, 15-31-130, 30-10-308, 33-1-311, 33-2-601,
15 33-2-1903, 33-2-1904, 33-18-605, 33-22-2002, 33-22-2004, 33-22-2006, 33-22-2008, 33-28-102, 33-28-107,
16 33-28-108, AND 33-28-207, MCA; REPEALING SECTIONS 33-2-609 AND 33-22-103, MCA; AND PROVIDING
17 AN IMMEDIATE EFFECTIVE DATE."
18
19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
20
21 **Section 1.** Section 15-30-2368, MCA, is amended to read:
22 **"15-30-2368. Tax credit for health insurance premiums paid -- eligible small employers --**
23 **pass-through entities.** (1) There is a tax credit, determined under Title 33, chapter 22, part 20, for eligible small
24 employers who are individuals against the taxes imposed in 15-30-2103 for qualifying premiums paid by the
25 eligible small employer for coverage of eligible employees and eligible employees' spouses and dependents
26 under a group health plan ~~as defined in 33-22-2002~~ subject to Title 33, chapter 22, part 20.
27 (2) If the employer is an S. corporation, the shareholders may claim a pro rata share of the tax credit.
28 If the employer is a partnership, the credit may be claimed by the partners in the same proportion used to report
29 the partnership's income or loss for Montana income tax purposes."
30

Section 2. Section 15-31-130, MCA, is amended to read:

"15-31-130. Tax credit for health insurance premiums paid -- eligible small employers -- corporations. There is a tax credit, as determined under Title 33, chapter 22, part 20, for eligible small employers against the taxes imposed in 15-31-101 and 15-31-502 for qualifying premiums paid by the eligible small employer for coverage of eligible employees and eligible employees' spouses and dependents under a group health plan ~~as defined in 33-22-2002~~ subject to Title 33, chapter 22, part 20."

Section 3. Section 30-10-308, MCA, is amended to read:

"30-10-308. Judicial review of orders. Any person aggrieved by a final order of the commissioner ~~may obtain a~~ is entitled to judicial review ~~of the order in any court of competent jurisdiction by filing in court, within 60 days after the entry of the order, a written petition praying that the order be modified or set aside in whole or in part. A copy of the petition shall be forthwith served upon the commissioner, and thereupon the commissioner shall certify and file in court a copy of the filing, testimony, and other evidence upon which the order was entered. When these have been filed, the court has exclusive jurisdiction to affirm, modify, enforce, or set aside the order, in whole or in part. The findings of the commissioner as to the facts, if supported by creditable evidence, are conclusive, unless appealed from. If either party applies to the court for leave to adduce additional evidence and shows to the satisfaction of the court that the additional evidence is material and that there were reasonable grounds for failure to adduce the evidence in the hearing before the commissioner, the court may order the taking of additional evidence in such manner and upon such conditions as the court may consider proper. The commencement of proceedings under this section does not, unless specifically ordered by the court, operate as a stay of the commissioner's order~~ as provided in Title 2, chapter 4, part 7."

Section 4. Section 33-1-311, MCA, is amended to read:

"33-1-311. General powers and duties. (1) The commissioner shall enforce the applicable provisions of the laws of this state and shall execute the duties imposed on the commissioner by the laws of this state.

(2) The commissioner has the powers and authority expressly conferred upon the commissioner by or reasonably implied from the provisions of the laws of this state.

(3) The commissioner shall administer the department to ensure that the interests of insurance consumers are protected.

(4) The commissioner may conduct examinations and investigations of insurance matters, in addition

to examinations and investigations expressly authorized, as the commissioner considers proper, to determine whether any person has violated any provision of the laws of this state or to secure information useful in the lawful administration of any provision. The cost of additional examinations and investigations must be borne by the state.

(5) The commissioner shall maintain as confidential any information or document received from:

(a) the national association of insurance commissioners; or

(b) another state agency, an insurance department from another state, a federal agency, or a foreign government that treats the same information or document as confidential. The commissioner may provide information or documents, including information or documents that are confidential, to another state agency, the national association of insurance commissioners, a state or federal law enforcement agency, a federal agency, a foreign government, or an insurance department in another state, if the recipient agrees to maintain the confidentiality of the information or documents.

(6) The department is a criminal justice agency as defined in 44-5-103."

Section 5. Section 33-2-601, MCA, is amended to read:

"33-2-601. Authorized deposits of insurers. The following deposits of insurers when made through the commissioner ~~shall~~ must be accepted and held and ~~shall be~~ are subject to the provisions of this part:

(1) deposits required under this code for authority to transact insurance in this state;

(2) deposits of domestic insurers when ~~made pursuant to~~ required by the laws of other states, provinces, and countries as ~~requirement~~ a condition for the authority to transact insurance ~~in such state, province, or country~~; or

(3) deposits of reserves made by domestic life insurers under 33-2-531~~;~~

~~(4) deposits in such additional amounts as are permitted to be made under 33-2-609~~."

Section 6. Section 33-2-1903, MCA, is amended to read:

"33-2-1903. RBC reports. (1) ~~Except as provided in 33-28-107(4)(b), each~~ Each domestic insurer shall, on or before each March 1 filing date, prepare and submit to the commissioner a report of its RBC levels as of the end of the previous calendar year in a form and containing information as required by the RBC instructions. In addition, each domestic insurer shall file its RBC report:

(a) with the NAIC in accordance with the RBC instructions; and

(b) with the insurance commissioner in any state in which the insurer is authorized to do business if that

1 insurance commissioner has notified the insurer of the request in writing, in which case the insurer shall file its
2 RBC report not later than the later of:
3 (i) 15 days from the receipt of notice to file its RBC report with that state; or
4 (ii) the March 1 filing date.
5 (2) A life and disability insurer's RBC must be determined in accordance with the formula set forth in the
6 RBC instructions. The formula must take into account and may adjust for the covariance between:
7 (a) the risk with respect to the insurer's assets;
8 (b) the risk of adverse insurance experience with respect to the insurer's liabilities and obligations;
9 (c) the interest rate risk with respect to the insurer's business; and
10 (d) all other business risks and other relevant risks as are set forth in the RBC instructions and
11 determined in each case by applying the factors in the manner set forth in the RBC instructions.
12 (3) A property and casualty insurer's RBC must be determined in accordance with the formula set forth
13 in the RBC instructions. The formula ~~shall~~ must take into account and may ~~adjust~~ be adjusted for the covariance
14 between:
15 (a) asset risk;
16 (b) credit risk;
17 (c) underwriting risk; and
18 (d) all other business risks and other relevant risks ~~that are~~ set forth in the RBC instructions and
19 determined in each case by applying the factors in the manner set forth in the RBC instructions.
20 (4) An excess of capital over the amount produced by the risk-based capital requirements contained in
21 this part and the formulas, schedules, and instructions referenced in 33-2-1906 through 33-2-1913 is desirable
22 in the business of insurance. Accordingly, insurers should seek to maintain capital above the RBC levels required
23 by this part. Additional capital is used and useful in the insurance business and helps to secure an insurer against
24 various risks inherent in or affecting the business of insurance and not accounted for or only partially measured
25 by the risk-based capital requirements contained in this part.
26 (5) If a domestic insurer files an RBC report that in the judgment of the commissioner is inaccurate, the
27 commissioner shall adjust the RBC report to correct the inaccuracy and shall notify the insurer of the adjustment.
28 The notice must contain a statement of the reason for the adjustment. An RBC report ~~so~~ adjusted as provided
29 in this subsection is referred to as an adjusted RBC report."
30

Section 7. Section 33-2-1904, MCA, is amended to read:

"33-2-1904. Company action level event. (1) "Company action level event" means any of the following events:

(a) the filing of an RBC report by an insurer ~~which indicates~~ indicating that:

(i) the insurer's total adjusted capital is greater than or equal to its regulatory action level RBC but less than its company action level RBC; ~~or~~

(ii) for a life or disability insurer, the insurer has total adjusted capital that:

(A) is greater than or equal to its company action level RBC but less than ~~the product of~~ its authorized control level RBC ~~and~~ multiplied by 2.5; and ~~that~~

(B) has a negative trend; or

(iii) for a property and casualty insurer, the insurer has total adjusted capital that:

(A) is greater than or equal to its company action level RBC but less than its authorized control level RBC multiplied by 3; and

(B) triggers the trend test determined in accordance with the trend test calculation included in the RBC instructions;

(b) the notification by the commissioner to the insurer of an adjusted RBC report that indicates an event in subsection (1)(a) if the insurer does not challenge the adjusted RBC report under 33-2-1908 or if the commissioner has rejected the insurer's challenge.

(2) In the event of a company action level event, the insurer shall prepare and submit to the commissioner an RBC plan that must:

(a) identify the conditions that contribute to the company action level event;

(b) contain proposals of corrective actions that the insurer intends to take and that would be expected to result in the elimination of the company action level event;

(c) provide projections of the insurer's financial results in the current year and at least the next 4 years, both in the absence of proposed corrective actions and giving effect to the proposed corrective actions, including projections of statutory operating income, net income, capital, and surplus. The projections for both new and renewal business may include separate projections for each major line of business and separately identify each significant income, expense, and benefit component.

(d) identify the key assumptions impacting the insurer's projections and the sensitivity of the projections to the assumptions; and

(e) identify the quality of and problems associated with the insurer's business, including but not limited to its assets, anticipated business growth and associated surplus strain, extraordinary exposure to risk, mix of business, and use of reinsurance, if any, in each case.

(3) The RBC plan must be submitted:

(a) within 45 days of the company action level event; or

(b) if the insurer challenges an adjusted RBC report pursuant to 33-2-1908, within 45 days after notification to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.

(4) Within 60 days after ~~the submission by~~ an insurer ~~of~~ submits an RBC plan to the commissioner, the commissioner shall notify the insurer as to whether the RBC plan may be implemented or is unsatisfactory in the judgment of the commissioner. If the commissioner determines that the RBC plan is unsatisfactory, the notification to the insurer must set forth the reasons for the determination and may ~~set forth proposed~~ propose revisions ~~that will~~ intended to render the RBC plan satisfactory in the judgment of the commissioner. Upon notification from the commissioner, the insurer shall prepare a revised RBC plan, which may incorporate by reference any revisions proposed by the commissioner, and shall submit the revised RBC plan to the commissioner:

(a) within 45 days after the notification from the commissioner; or

(b) if the insurer challenges the notification from the commissioner under 33-2-1908, within 45 days after a notification to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.

(5) ~~In the event of a notification by~~ If the commissioner ~~to~~ notifies an insurer that the insurer's RBC plan or revised RBC plan is unsatisfactory, the commissioner may, at the commissioner's discretion, subject to the insurer's right to a hearing under 33-2-1908, specify in the notification that the notification constitutes a regulatory action level event.

(6) Each domestic insurer that files an RBC plan or revised RBC plan with the commissioner shall file a copy of the RBC plan or revised RBC plan with the insurance commissioner in any state in which the insurer is authorized to do business if:

(a) the state has an RBC provision substantially similar to 33-2-1909(1); and

(b) the insurance commissioner of that state has notified the insurer in writing of its request for the filing, in which case the insurer shall file a copy of the RBC plan or revised RBC plan in that state by the later of:

(i) 15 days after the receipt of notice to file a copy of its RBC plan or revised RBC plan with that state; or

(ii) the date on which the RBC plan or revised RBC plan is filed under subsections (3) and (4)."

1

2 **Section 8.** Section 33-18-605, MCA, is amended to read:

3 **"33-18-605. Use of credit information.** (1) An insurer authorized to do business in this state that uses
4 credit information to underwrite or rate risks may not:

5 (a) use an insurance score that is calculated using income, gender, address, zip code, ethnic group,
6 religion, marital status, or nationality of the consumer as a factor;

7 (b) deny, cancel, or not renew a policy of personal insurance on the basis of credit information without
8 consideration of any other applicable underwriting factor independent of credit information and not expressly
9 prohibited by subsection (1)(a);

10 (c) base an insured's renewal rates for personal insurance upon credit information without consideration
11 of any other applicable factor independent of credit information;

12 (d) take an adverse action against a consumer because the consumer does not have a credit card
13 account without consideration of any other applicable factor independent of credit information;

14 (e) consider an absence of credit information or an inability to calculate an insurance score in
15 underwriting or rating personal insurance unless the insurer does one of the following:

16 (i) treats the consumer as otherwise approved by the commissioner if the insurer presents information
17 that the absence or inability relates to the risk for the insurer;

18 (ii) treats the consumer as if the consumer had neutral credit information, as defined by the insurer; or

19 (iii) excludes the use of credit information as a factor and uses only other underwriting criteria;

20 (f) take an adverse action against a consumer based on credit information unless an insurer obtains and
21 uses a credit report issued or an insurance score calculated within 90 days from the date that the policy is first
22 written or renewal is issued;

23 (g) use credit information unless not later than every 36 months following the last time that the insurer
24 obtained current credit information for the insured, the insurer recalculates the insurance score or obtains an
25 updated credit report. Regardless of the requirements of this subsection (1)(g):

26 (i) at annual renewal, upon the request of a consumer or the consumer's agent, the insurer shall
27 reunderwrite and rerate the policy based upon a current credit report or insurance score. An insurer need not
28 recalculate the insurance score or obtain the updated credit report of a consumer more frequently than once in
29 a 12-month period.

30 (ii) the insurer has the discretion to obtain current credit information upon any renewal before the 36

1 months provided for in <u>this</u> subsection (1)(g), if consistent with its underwriting guidelines;
2 (iii) an insurer may but does not have to obtain current credit information for an insured, despite the
3 requirements of subsection (1)(g)(i), if one of the following applies:
4 (A) the insurer is treating the consumer as otherwise approved by the commissioner;
5 (B) the insured is in the most favorably priced tier of the insurer within a group of affiliated insurers;
6 (C) credit was not used for underwriting or rating the insured when the policy was initially written;
7 (D) the insurer reevaluates the insured beginning not later than 36 months after inception and at similar
8 succeeding times based upon other underwriting or rating factors, excluding credit information.
9 (h) use a credit <u>report or an insurance</u> score that treats any of the following as a negative factor for the
10 purpose of underwriting or rating a policy of personal insurance:
11 (i) credit inquiries not initiated by the consumer or inquiries requested by the consumer for the
12 consumer's own credit information;
13 (ii) inquiries relating to insurance coverage, if so identified on a consumer's credit report;
14 (iii) collection accounts with a medical industry code, if so identified on the consumer's credit report;
15 (iv) multiple-lender inquiries, if coded by the consumer reporting agency on the consumer's credit report
16 as being from the home mortgage industry and made within 30 days of one another, unless only one inquiry is
17 considered;
18 (v) multiple-lender inquiries, if coded by the consumer reporting agency on the consumer's credit report
19 as being from the automobile lending industry and made within 30 days of one another, unless only one inquiry
20 is considered;
21 (vi) the number of credit inquiries;
22 (vii) the consumer's use of a particular type of credit card, charge card, or debit card or the number of
23 credit cards obtained by a consumer;
24 (viii) a loan if information from the credit report makes it evident that the loan is for the purchase of an
25 automobile or a personal residence. However, an insurer may consider the bill payment history of any loan, the
26 total number of loans, or both.
27 (ix) the consumer's total available line of credit or total debt. However, an insurer may consider:
28 (A) the consumer's bill payment history on the debt; or
29 (B) the total amount of outstanding debt if the outstanding debt exceeds the total line of credit.
30 (2) (a) An insurer shall, on written request from an applicant or an insured, provide reasonable

1 underwriting or rating exceptions for a consumer whose credit report has been directly affected by an
2 extraordinary event.
3 (b) An insurer may require reasonable written and independently verifiable documentation of the event
4 and the effect of the event on the consumer's credit before granting an exception. An insurer is not required to
5 consider repeated extraordinary events or extraordinary events the insurer reconsidered previously.
6 (c) An insurer may also consider granting an exception to a consumer for an extraordinary event not
7 listed in this section.
8 (d) An insurer may not be considered to be out of compliance with its filed rules and rates as a result of
9 granting an exception pursuant to this subsection (2).
10 (e) As used in this subsection (2), "extraordinary event" means:
11 (i) expenses related to a catastrophic injury or illness;
12 (ii) temporary loss of employment;
13 (iii) death of an immediate family member; or
14 (iv) theft of identity pursuant to 45-6-332."
15
16 **Section 9.** Section 33-22-2002, MCA, is amended to read:
17 **"33-22-2002. Small business health insurance pool -- definitions.** As used in this part, the following
18 definitions apply:
19 (1) "Board" means the board of directors of the small business health insurance pool as provided for in
20 33-22-2003.
21 (2) "Dependent" has the meaning provided in 33-22-1803.
22 (3) (a) "Eligible small employer" means an employer who is sponsoring or will sponsor a group health
23 plan and who employed at least two but not more than nine employees during the preceding calendar year and
24 who employs at least two but not more than nine employees on the first day of the plan year.
25 (b) The term includes small employers who obtain group health plan coverage through a qualified
26 association health plan.
27 (4) "Employee" means an eligible employee as defined in 33-22-1803.
28 (5) "Group health plan" has the meaning provided in 33-22-140.
29 (6) "Premium" means the amount of money that a health insurance issuer charges to provide coverage
30 under a group health plan.

1 (7) "Premium assistance payment" means a payment provided for in 33-22-2006 on behalf of employees
2 who qualify to be applied on a monthly basis to premiums paid for group health plan coverage through the
3 purchasing pool or through qualified association health plans.
4 (8) "Premium incentive payment" means a payment provided for in 33-22-2007(1)(b) to eligible small
5 employers who qualify under 33-22-2007 to be applied to premiums paid on a monthly basis for group health plan
6 coverage obtained through the purchasing pool or through qualified association health plans.
7 (9) "Purchasing pool" means the small business health insurance pool.
8 (10) "Qualified association health plan" means a plan established by an association whose members
9 consist of employers who sponsor group health plans for their employees and purchase that coverage through
10 an association that qualifies as a bona fide association, as defined in 33-22-1803, or nonbona fide, as provided
11 for in administrative rule. A qualified association health plan is subject to applicable employer group health
12 insurance law and must receive approval from the commissioner to operate as a qualified association health plan
13 for the purposes of this part.
14 (11) "Related employers" means ~~persons having a relationship as described in section 267 of the Internal~~
15 ~~Revenue Code, 26 U.S.C. 267~~:
16 (a) affiliates or affiliated entities or persons who directly or indirectly, through one or more intermediaries,
17 control, are controlled by, or are under common control with a specified entity or person; and
18 (b) entities or persons that are eligible to file a combined or joint tax return for purposes of state taxation.
19 (12) "Tax credit" means a refundable tax credit as provided for in 33-22-2008.
20 (13) "Tax year" means the taxpayer's tax year for federal income tax purposes."
21
22 **Section 10.** Section 33-22-2004, MCA, is amended to read:
23 **"33-22-2004. Powers and duties of board.** (1) The board shall:
24 (a) establish an operating plan that includes but is not limited to administrative and accounting
25 procedures for the operation of the purchasing pool and a schedule for premium incentive and premium
26 assistance payments and that complies with the powers and duties provided for in this section;
27 (b) require employers and employees to reapply for premium incentive payments or premium assistance
28 payments on an annual basis;
29 (c) upon timely reapplication, give priority to employers and their employees who are already receiving
30 the premium incentive payments and premium assistance payments~~;~~. If the reapplication is more than 30 days

1 late, the priority will not be given and the employer will be added to the waiting list provided for in 33-22-2008.
2 (d) upon timely reapplication as provided in subsection (1)(c), allow employers to retain eligibility to
3 receive premium incentive payments and premium assistance payments on behalf of their employees if the
4 number of their employees goes over the maximum number, not to exceed nine employees, established by the
5 commissioner in administrative rule;
6 (e) renew purchasing pool group health plan coverage for all employer groups, even if the employer
7 group no longer receives or is eligible for a premium incentive or premium assistance payment;
8 (f) adopt a premium incentive payment schedule that is based on a percentage of the employer's share
9 of the premium and apply the schedule uniformly to all registered eligible small employers who join the purchasing
10 pool or obtain qualified association health plan coverage;
11 (g) adopt premium assistance payment amounts that, in combination with the premium incentive
12 payments, are consistent with the amounts provided for in 33-22-2006 and 33-22-2008 or, with the assistance
13 of the department of public health and human services, adopt a premium assistance payment schedule that is
14 equitably proportional to the income or wage level for employees;
15 (h) establish criteria for determining which employees will be eligible for a premium assistance payment
16 and the amount that the employees will receive from among those eligible small employer groups that have
17 registered with the commissioner pursuant to 33-22-2008 and applied for coverage under the purchasing pool
18 group health plan or qualified association health plan. However, to the extent that federal funds are used to make
19 some premium assistance payments, criteria for those payments must be consistent with any waiver
20 requirements determined by the department of public health and human services pursuant to 53-2-216. Eligibility
21 for employees is not limited to the waiver eligibility groups.
22 (i) make appropriate changes to eligibility or other elements in the operating plan as needed to reach
23 the goal of expending 90% of the funding dedicated to premium incentive payments and premium assistance
24 payments during the current biennium;
25 (j) limit the total amount of premium incentive payments and premium assistance payments paid to the
26 amount of available state, federal, and private funding;
27 (k) approve no more than six fully insured group health plans with different benefit levels that will be
28 offered to employers participating in the purchasing pool;
29 (l) prepare appropriate specifications and bid forms and solicit bids from health insurance issuers
30 authorized to do business in this state;

1 (m) contract with no more than three health insurance issuers to underwrite the group health plans that
2 will be offered through the purchasing pool;
3 (n) request that the department of public health and human services seek a federal waiver for medicaid
4 matching funds for premium assistance payments based on the department's analysis, as provided in 53-2-216,
5 if it is in the best interests of the purchasing pool;
6 (o) comply with the participation requirements provided for in 33-22-1811;
7 (p) meet at least four times annually; and
8 (q) within 2 years after the purchasing pool is established and considered stable by the board, examine
9 the possibility of offering an opportunity for individual sole proprietors without employees to purchase insurance
10 from the purchasing pool without premium incentive payments, premium assistance payments, or tax credits.
11 (2) The board may:
12 (a) borrow money;
13 (b) enter into contracts with insurers, administrators, or other persons;
14 (c) hire employees to perform the administrative tasks of the purchasing pool;
15 (d) assess its members for costs associated with administration of the purchasing pool and request that
16 the commissioner transfer funds or request that the department of public health and human services transfer
17 funds from the special revenue account, as provided in 53-6-1201, for that purpose;
18 (e) set contribution levels for employers;
19 (f) at least 30 days before the end of the current fiscal year, request that funds be transferred from the
20 funds appropriated for premium incentive payments and premium assistance payments to the department of
21 revenue for reimbursement of the general fund to offset tax credits if the number of eligible small employers
22 seeking premium incentive payments and employees receiving premium assistance payments is insufficient to
23 exhaust at least 90% of the appropriated funds for the premium incentive and assistance payments during a fiscal
24 year;
25 (g) at least 90 days before the end of the current fiscal year, request that funds be transferred from the
26 funds allocated for tax credits to the funds appropriated for premium incentive payments and premium assistance
27 payments if the number of eligible small employers seeking tax credits is insufficient to exhaust at least 90% of
28 the funds allocated for tax credits during a fiscal year;
29 (h) seek other federal, state, and private funding sources;
30 (i) accept all small employer groups who apply for coverage under the small business health insurance

pool group health plan even if they are not eligible for any tax credit or premium incentive payment and have not been registered by the commissioner pursuant to 33-22-2008;

(j) receive from the commissioner's office or the department of public health and human services premium incentive payments on behalf of eligible small employers and premium assistance payments on behalf of employees, collect the employer or employee premiums from the employer or employees, and make premium payments to insurers on behalf of the eligible small employers and employees;

(k) request the commissioner to direct more than 30% of the available funding for premium incentives and premium assistance payments to qualified association health plan coverage instead of purchasing pool coverage; and

(l) pay appropriate commissions to licensed insurance producers who market purchasing pool coverage."

Section 11. Section 33-22-2006, MCA, is amended to read:

"33-22-2006. Premium incentive payments, premium assistance payments, and tax credits for small employer health insurance premiums paid -- eligibility for small group coverage -- amounts. (1) An employer is eligible to apply for premium incentive payments and premium assistance payments or a tax credit under this part if the employer and any related employers:

(a) did not have more than the number of employees established for eligibility by the commissioner at the time of registering for premium incentive payments or premium assistance payments or a tax credit under 33-22-2008;

(b) provide or will provide a group health plan that meets the requirements of creditable coverage for the employer's and any related employer's employees;

(c) do not have delinquent state ~~income~~ tax liability owing to the department of revenue from previous years;

(d) have been registered as eligible small employer participants by the commissioner as provided in 33-22-2008; and

(e) do not have any employees, not including an owner, partner, or shareholder of the business, who received more than $75,000 in wages, as defined in 39-71-123, from the small employer or related employer in the prior tax year.

(2) An owner, partner, or shareholder of a business who received more than $75,000 in wages, as defined in 39-71-123, and those individuals' spouses who are employees are not eligible under this chapter for:

1 (a) any premium assistance payment. However, a premium incentive payment may be made for the
2 premium share paid by the business for group health insurance coverage for:
3 (i) the owner, partner, or shareholder;
4 (ii) a spouse of those listed in subsection (2)(a)(i) who is also an employee of the business; or
5 (iii) dependents of those listed in subsection (2)(a)(i).
6 (b) a tax credit for group health insurance premiums paid by the business or the owner, partner, or
7 shareholder for group health insurance coverage for the individual or the individual's dependents.
8 (3) An employee, including an owner, partner, or shareholder or any dependent of an employee, who
9 is also eligible for the children's health insurance program provided for under Title 53, chapter 4, part 10, or
10 medicaid under Title XIX of the Social Security Act may become ineligible to receive a premium assistance
11 payment.
12 (4) The commissioner shall establish, by rule, the maximum number of employees that may be employed
13 to qualify as a small employer under subsection (1). However, the number may not be less than two employees
14 or more than nine employees. The maximum number may be different for employers seeking premium incentive
15 payments and premium assistance payments than for employers seeking a tax credit. The number must be set
16 to maximize the number of employees receiving coverage under this part. The commissioner may not change
17 the maximum employee number more often than every 6 months. If the maximum number of allowable employees
18 is changed, the change does not disqualify registered employers with respect to the tax year for which the
19 employer has registered.
20 (5) Except as provided in subsection (6), an eligible small employer may claim a tax credit in the following
21 amounts:
22 (a) (i) not more than $100 each month for each employee and $100 each month for each employee's
23 spouse, if the employer covers the employee's spouse, if the average age of the group is under 45 years of age;
24 or
25 (ii) not more than $125 each month for each employee and $100 each month for each employee's
26 spouse, if the employer covers the employee's spouse, if the average age of the group is 45 years of age or older;
27 and
28 (b) not more than $40 each month for each dependent, other than the employee's spouse, if the
29 employer is paying for coverage for the dependents, not to exceed two dependents of an employee in addition
30 to the employee's spouse.

(6) An employer may not claim a tax credit:

(a) in excess of 50% of the total premiums paid by the employer for the qualifying small group;

(b) for premiums paid from a medical care savings account provided for in Title 15, chapter 61; or

(c) for premiums for which a deduction is claimed under 15-30-2131 or 15-31-114.

(7) An employer may not claim a premium incentive payment in excess of 50% of the total premiums paid by the employer for the qualifying small group."

Section 12. Section 33-22-2008, MCA, is amended to read:

"33-22-2008. Registration -- funding limitations -- transfers -- maximum number -- waiting list -- information transfer for tax credits. (1) (a) Each eligible small employer that proposes to apply for premium incentive payments and premium assistance payments or a tax credit under this part must be registered each year with the commissioner.

(b) An eligible small employer may submit a new application for the premium incentive payments and premium assistance payments or the tax credit anytime during the year, but in order to maintain the employer's registration for the next year, the registration application must be renewed each year.

~~(c) The commissioner shall begin accepting renewal applications on October 1 of each year and stop accepting renewal applications on October 31 of each year.~~

~~(d)~~(c) The registration application must include the number of individuals covered, as of the date of the registration application, under the small group health plan for which the employer is seeking premium incentive payments and premium assistance payments or a tax credit. If, after the initial registration, the number of individuals increases, the employer may apply to register the additional individuals, but those additional individuals may be added only at the discretion of the commissioner, who shall limit enrollment based on available funds.

~~(e)~~(d) A small employer is not eligible to apply for premium incentive payments and premium assistance payments or a tax credit for a number of employees, or the employees' spouses or dependents, over the number that has been established in 33-22-2006 as the maximum number of employees an employer may have in order to qualify for registration for the time period in question.

~~(f)~~(e) An employer's decision to apply for premium incentive payments and premium assistance payments or a tax credit is irrevocable for 12 months or until the purchasing pool group health plan or qualified association health plan renews its registration, whichever time period is less. An employer may choose to

1 discontinue receiving any premium incentive payments and premium assistance payments or tax credits at any
2 time.
3 (2) The commissioner shall register qualifying eligible small employers in the order in which applications
4 are received and according to whether or not the application is for premium incentive payments and premium
5 assistance payments or a tax credit. Initially, 60% of the available funding must be dedicated to provide and
6 maintain premium incentive payments and premium assistance payments for eligible small employers who have
7 not sponsored group health plans that provide creditable coverage in the previous 2 years and who chose to join
8 the purchasing pool or a qualified association health plan and 40% of the available funding must be dedicated
9 to tax credits for eligible small employers who currently sponsor a small group health plan that provides creditable
10 coverage. Funding may be transferred from the allocated fund for premium incentive payments and premium
11 assistance payments to the general fund for tax credits or from the funds allocated for tax credits to the allocated
12 fund for premium incentive payments and premium assistance payments if the board requests the transfer as
13 provided in 33-22-2004 and the commissioner approves the request.
14 (3) (a) The maximum number of eligible small employers is reached when the anticipated amount of
15 claims for premium incentive payments and premium assistance payments and tax credits has reached 95% of
16 the amount of money allocated for premium incentive payments and premium assistance payments and tax
17 credits.
18 (b) The commissioner may establish a waiting list for applicants that are otherwise qualified for
19 registration but cannot be registered because of a lack of money or because the maximum number of eligible
20 small employers has been reached.
21 (c) The commissioner shall mail to each employer registered under this section a notice of registration
22 containing a unique registration number and indicating eligibility for either premium incentive payments and
23 premium assistance payments or a tax credit. The commissioner shall also issue to each employer that is eligible
24 for premium incentive payments and premium assistance payments or the tax credit a certificate, placard, sticker,
25 or other evidence of participation that may be publicly posted.
26 (d) The commissioner shall notify all persons who applied for registration and who were not accepted
27 that they were not registered and the reason that they were not registered.
28 (4) A prospective participant shall apply for registration on a form provided by the commissioner. The
29 prospective participant shall:
30 (a) provide the number of employees and whether the employer qualifies under 33-22-2006;

1 (b) provide information that is necessary to estimate the amount of the premium incentive payments and
2 premium assistance payments payable to the applicant or the amount of the tax credit available to the applicant,
3 such as the ages of employees or dependents, relationships of employees' dependents, and information required
4 by the department of public health and human services for determination of eligibility for premium assistance
5 payments matched by federal funds;
6 (c) indicate whether the prospective employer intends to pursue the claim as a tax credit through the
7 income tax process or through premium incentive payments and premium assistance payments to be applied
8 toward purchasing pool or eligible qualified association health plan coverage;
9 (d) indicate whether or not the employer previously sponsored a group health plan that provided
10 creditable coverage and, if so, when and for how long; and
11 (e) provide any additional information determined by the commissioner to be necessary to support an
12 application.
13 (5) Each year, small employer participants shall timely reregister with the commissioner in order to
14 determine the participant's continued eligibility. The commissioner shall accept applications for continued
15 registration:
16 (a) for purchasing pool participants at any time within 12 months of the initial registration approval or
17 within the time period for renewal of the coverage under this part, whichever is longer;
18 (b) for tax credit participants on December 1 of each year. The commissioner shall stop accepting
19 renewal applications for tax credit participants 60 calendar days later.
20 (6) The commissioner shall transmit to the department of revenue, at least annually, a list of eligible small
21 employers that are taxpayers entitled to the tax credit and shall specify the taxpayer's name and tax identification
22 number, the tax year to which the credit applies, the amount of the credit, and whether the credit is to be applied
23 against taxes due on the taxpayer's return or paid as premium incentive payments or premium assistance
24 payments. Unless there has been a finding of fraud or misrepresentation on the part of the taxpayer regarding
25 issues relating to eligibility for the tax credit, the department of revenue may not redetermine or change the
26 commissioner's determination regarding the taxpayer's entitlement to and amount of the tax credit.
27 (7) If the department of public health and human services receives approval for a section 1115 waiver
28 as provided in 53-2-216, the commissioner shall work with the department of public health and human services
29 with regard to eligibility determinations as required by federal law or waiver conditions.
30 (8) The commissioner may disclose the personal information of any individual applying for or receiving

premium assistance, including that of an employee or a dependent of an employee, to the department of public health and human services for use in determining the individual's eligibility for the children's health insurance program provided for under Title 53, chapter 4, part 10, or medicaid under Title XIX of the Social Security Act. The department of public health and human services shall maintain the confidentiality of the personal information."

Section 13. Section 33-28-102, MCA, is amended to read:

"33-28-102. Licensing -- authority. (1) A captive insurance company, when permitted by its organizational document, may apply to the commissioner for a license to provide property insurance, casualty insurance, life insurance, disability income insurance, surety insurance, marine 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 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;

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

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

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

(2) A captive insurance company may not write any insurance business unless:

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

(b) its board of directors, board of managing members, or a reciprocal insurer's subscribers' advisory

1 committee holds at least one meeting each year in this state;
2 (c) it maintains its principal place of business in this state; and
3 (d) ~~(i)~~ it appoints a registered agent to accept service of process~~;~~,
4 ~~(ii)~~ files the name and contact information and any subsequent changes regarding the registered agent
5 ~~are filed~~ with the commissioner~~;~~, and
6 ~~(iii) it~~ agrees that whenever the registered agent cannot be found with reasonable diligence, the
7 commissioner's office may act as an agent of the captive insurance company with respect to any action or
8 proceeding and may be served in accordance with 33-1-603.
9 (3) (a) Before receiving a license, a captive insurance company shall:
10 (i) with respect to a captive insurance company formed as a business entity:
11 (A) file with the commissioner a certified copy of its organizational documents, a statement under oath
12 of an officer of the business entity showing its financial condition, and any other statements or documents
13 required by the commissioner; and
14 (B) submit to the commissioner for approval a description of the coverages, deductibles, coverage limits,
15 and rates, together with any additional information that the commissioner may reasonably require;
16 (ii) with respect to a captive insurance company formed as a reciprocal insurer:
17 (A) file with the commissioner a certified copy of the power of attorney of its attorney-in-fact, a certified
18 copy of its subscribers' agreement, a statement under oath of its attorney-in-fact showing its financial condition,
19 and any other statements or documents required by the commissioner; and
20 (B) submit to the commissioner for approval a description of the coverages, deductibles, coverage limits,
21 and rates, together with any additional information that the commissioner may reasonably require.
22 (b) ~~In the event of any~~ If there is a subsequent material change in any of the items in the description
23 provided for in subsection (3)(a), the captive insurance company shall submit to the commissioner for approval
24 an appropriate revision and may not offer any additional kinds of insurance until the commissioner approves a
25 revision of the description ~~is approved by the commissioner~~. The captive insurance company shall inform the
26 commissioner of any change in rates within 30 days of the adoption of the change.
27 (c) In addition to the information required by subsections (3)(a) and (3)(b), each applicant captive
28 insurance company shall file with the commissioner evidence of the following:
29 (i) the amount and liquidity of its assets relative to the risks to be assumed;
30 (ii) the adequacy of the expertise, experience, and character of the person or persons who will manage

1 it;
2 (iii) the overall soundness of its plan of operation;
3 (iv) the adequacy of the loss prevention programs of its parent, members, or industrial insureds as
4 applicable; and
5 (v) any other factors considered relevant by the commissioner in ascertaining whether the proposed
6 captive insurance company will be able to meet its policy obligations.
7 (d) In addition to the information required by this section, each applicant that is a protected cell captive
8 insurance company shall file with the commissioner the following:
9 (i) a business plan demonstrating how the applicant will account for the loss and expense experience
10 of each protected cell at a level of detail found to be sufficient by the commissioner and how it will report the
11 experience to the commissioner;
12 (ii) a statement acknowledging that all financial records of the protected cell captive insurance company,
13 including records pertaining to any protected cells, must be made available for inspection or examination by the
14 commissioner or the commissioner's designated agent;
15 (iii) all contracts or sample contracts between the protected cell captive insurance company and any
16 participants; and
17 (iv) evidence that expenses will be allocated to each protected cell in a fair and equitable manner.
18 (e) Information submitted pursuant to this subsection (3) must remain confidential and may not be made
19 public by the commissioner or an employee or agent of the commissioner without the written consent of the
20 company, except that:
21 (i) the information may be discoverable by a party in a civil action or contested case to which the captive
22 insurance company that submitted the information is a party, upon a showing by the party seeking to discover
23 the information that the information sought is relevant to and necessary for the furtherance of the action or case,
24 the information sought is unavailable from other nonconfidential sources, and a subpoena issued by a judicial
25 or administrative officer of competent jurisdiction has been submitted to the commissioner;
26 (ii) the commissioner may, in the commissioner's discretion, disclose the information to a public officer
27 having jurisdiction over the regulation of insurance in another state or to a public official of the federal
28 government, as long as the public official agrees in writing to maintain the confidentiality of the information and
29 the laws of the state in which the public official serves, if applicable, require the information to be and to remain
30 confidential.

1 (4) (a) Each captive insurance company shall pay to the commissioner a nonrefundable fee of $200 for
2 the examining, investigating, and processing of its application for license, and the commissioner is authorized
3 to retain legal, financial, and examination services from outside the department, the reasonable cost of which may
4 be charged to the applicant.
5 (b) The provisions of Title 33, chapter 1, part 4, apply to examinations, investigations, and processing
6 conducted under the authority of this section. In addition, each captive insurance company shall pay a license
7 fee for the year of registration and a renewal fee for each subsequent year of $300.
8 (5) If the commissioner is satisfied that the documents and statements that the applicant captive
9 insurance company has filed comply with the provisions of this chapter and applicable provisions of Title 33, the
10 commissioner may grant a license authorizing the company to do insurance business in this state. The license
11 is effective until March 1 of each year and may be renewed upon proper compliance with this chapter."
12
13 **Section 14.** Section 33-28-107, MCA, is amended to read:
14 **"33-28-107. Reports and statements.** (1) A captive insurance company is not required to make an
15 annual report except as provided in this section.
16 (2) (a) Except as provided in subsection (2)(b), on or before March 1 of each year, each captive
17 insurance company shall submit to the commissioner a report of its financial condition in a form and manner as
18 required by the commissioner, verified by oath of two of its executive officers.
19 (b) A pure captive insurance company, branch captive insurance company, or industrial insured captive
20 company, excluding captive risk retention groups, may make written application for filing the required report on
21 a fiscal yearend basis. If an alternative reporting date is granted:
22 (i) the required report is due 60 days after fiscal yearend; and
23 (ii) in order to provide sufficient information to support the premium tax return, a pure captive insurance
24 company or industrial insured insurance company shall file a report acceptable to the commissioner prior to
25 March 1 of each year for the prior calendar yearend.
26 (c) Each captive insurance company shall report using generally accepted accounting principles, unless
27 the commissioner requires the use of statutory accounting principles, with any necessary or useful modifications
28 or additions required by the commissioner. The commissioner may also require the report to be supplemented
29 by additional information.
30 (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) Captive risk retention groups shall file reports and statements in accordance with Title 33, chapter 2, part 7, except that a captive risk retention group may file using generally accepted accounting principles. 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 commissioner may waive the RBC report required in 33-2-1903 for a captive risk retention group that files a report or statement pursuant to subsection (4)(a) or for a captive risk retention group that was formed in the last 2 years.~~

~~(c)~~(b) The filings in subsection (4)(a) are required on an annual and quarterly basis."

Section 15. 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~~ The commissioner or some competent person appointed by the commissioner shall ~~visit each captive insurance company and thoroughly inspect and~~ examine ~~its~~ the affairs, transactions, accounts, records, and assets of each captive insurance company as often as the commissioner considers advisable but no less frequently than every 5 years ~~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)~~(b) The expenses and charges of the examination must be paid to the commissioner by the company

1 or companies examined.
2 (2) The provisions of Title 33, chapter 1, part 4, apply to examinations conducted under this section.
3 (3) Except as provided in subsection (4), all examination reports, preliminary examination reports or
4 results, working papers, recorded information, documents, and their copies produced by, obtained by, or
5 disclosed to the commissioner or any other person in the course of an examination made under this section are
6 confidential, are not subject to subpoena, and may not be made public by the commissioner or an employee or
7 agent of the commissioner without the written consent of the company or upon court order.
8 (4) (a) Subsection (3) does not prevent the commissioner from using information obtained pursuant to
9 this section in furtherance of the commissioner's regulatory authority under Title 33. The commissioner may, in
10 the commissioner's discretion, grant access to information obtained pursuant to this section to public officers
11 having jurisdiction over the regulation of insurance in any other state or country or to law enforcement officers
12 of this state or any other state or agency of the federal government at any time, as long as the officers receiving
13 the information agree in writing to hold it in a manner consistent with this section.
14 (b) Captive risk retention group reports produced pursuant to the examination requirements of this
15 section are public writings as defined in 2-6-101.
16 (5) Except as provided in subsection (6), the provisions of this section apply to all business written by
17 a captive insurance company.
18 (6) The examination for a branch captive insurance company may only be of branch business and
19 branch operations if the branch captive insurance company has satisfied the requirements of 33-28-107(2)(d) to
20 the satisfaction of the commissioner.
21 (7) As a condition of licensure of a branch captive insurance company, the foreign captive insurance
22 company shall grant authority to the commissioner for examination of the affairs of the foreign captive insurance
23 company in the jurisdiction in which the foreign captive insurance company is formed."
24
25 **Section 16.** Section 33-28-207, MCA, is amended to read:
26 **"33-28-207. Applicable laws.** (1) The following apply to captive insurance companies:
27 (a) the definitions of commissioner and department provided in 33-1-202, property insurance provided
28 in 33-1-210, casualty insurance provided in 33-1-206, life insurance provided in 33-1-208, health insurance
29 coverage and group health plans provided in 33-22-140, and disability income insurance provided in 33-1-235;
30 (b) the limitation provided in 33-2-705 on the imposition of other taxes;

1 (c) the provisions relating to supervision, rehabilitation, and liquidation of insurance companies as
2 provided for in Title 33, chapter 2, part 13;
3 (d) the provisions of 33-1-311, 33-1-603, 33-3-431, 33-18-201, 33-18-203, 33-18-205, and 33-18-242;
4 ~~and~~
5 (e) the provisions relating to insurance holding company systems in Title 33, chapter 2, part 11; and
6 ~~(e)~~(f) the provisions relating to dissolution and liquidation in Title 33, chapter 3, part 6, except that a pure
7 captive insurance company may proceed with voluntary dissolution and liquidation after prior notice to and
8 approval of the commissioner without following the provisions of Title 33, chapter 3, part 6.
9 (2) This chapter may not be construed as exempting a captive insurance company, its parent, or affiliated
10 companies from compliance with the laws governing workers' compensation insurance.
11 (3) A captive insurance company or branch captive insurance company that writes health insurance
12 coverage or group health plans as defined in 33-22-140 shall comply with applicable state and federal laws.
13 (4) The following provisions apply to captive risk retention groups:
14 (a) those relating to actuarial opinions in Title 33, chapter 1, part 14; and
15 (b) those relating to risk-based capital in Title 33, chapter 2, part 19.
16 ~~(4)~~(5) Except as expressly provided in this chapter, the provisions of Title 33 do not apply to captive
17 insurance companies."
18
19 NEW SECTION. **Section 17. Repealer.** The following sections of the Montana Code Annotated are
20 repealed:
21 33-2-609. Excess deposits.
22 33-22-103. Violations.
23
24 NEW SECTION. **Section 18. Severability.** If a part of [this act] is invalid, all valid parts that are
25 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
26 the part remains in effect in all valid applications that are severable from the invalid applications.
27
28 NEW SECTION. **Section 19. Effective date.** [This act] is effective on passage and approval.
29 - END -