

SENATE BILL NO. 245

INTRODUCED BY D. SALOMON, S. FITZPATRICK

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS PERTAINING TO CAPTIVE INSURANCE COMPANIES; ALLOWING FOR INACTIVE CAPTIVE INSURANCE COMPANIES TO APPLY FOR DORMANT STATUS; PROVIDING DORMANT CAPTIVE INSURANCE FEES; PROVIDING DORMANT CAPTIVE INSURANCE REQUIREMENTS; AMENDING SECTIONS 33-2-705, 33-28-105, AND 33-28-108, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

NEW SECTION. Section 1. Dormant captive insurer. (1) As used in this section, unless the context

requires otherwise, "dormant captive insurance company" means a captive insurance company, other than a captive risk retention group, that has:

- (a) ceased transacting the business of insurance, including the issuance of insurance policies; and
- (b) no remaining liabilities associated with insurance business transactions or insurance policies issued prior to the filing of its application for a certificate of dormancy under this section.

(2) A captive insurance company domiciled in Montana that meets the criteria of this section may apply to the commissioner for a certificate of dormancy. The certificate of dormancy is subject to expiration at the end of a consecutive 5-year period and may not be renewed.

(3) (a) A dormant captive insurance company that has been issued a certificate of dormancy shall:

- (i) possess and thereafter maintain unimpaired, paid-in capital and surplus of not less than \$25,000;
- (ii) within 90 days of each fiscal year end, submit to the commissioner a report of its financial condition, verified by oath of two of its executive officers, in a form as may be prescribed by the commissioner; and

(iii) pay \$1,000 annual dormancy tax due on or before March 1 of each year for any portion of the preceding year in which the captive insurance company held a certificate of dormancy. Each series of members as defined in 35-8-102 is considered separate pursuant to this section for purposes of paying the \$1,000 annual dormancy tax under a certificate of dormancy. A dormant captive insurance company is not otherwise liable for any annual renewal as provided in 33-28-102.

(b) A dormant captive insurance company that has been issued a certificate of dormancy may not:



1 (i) be subject to or liable for the payment of any tax under 33-28-201;

2 (ii) be subject to examinations as provided in 33-28-108.

3 (4) A dormant captive insurance company shall apply to the commissioner for approval to surrender its
4 certificate of dormancy and resume conducting the business of insurance prior to issuing any insurance policies.

5 (5) A certificate of dormancy must be revoked if a dormant captive insurance company no longer meets
6 the criteria of this section.

7

8 **Section 2.** Section 33-2-705, MCA, is amended to read:

9 **"33-2-705. Report on premiums and other consideration -- tax.** (1) Each authorized insurer and each
10 formerly authorized insurer with respect to premiums received while an authorized insurer in this state shall file
11 with the commissioner, on or before March 1 each year, a report in a form prescribed by the commissioner
12 showing total direct premium income, including policy, membership, and other fees, premiums paid by application
13 of dividends, refunds, savings, savings coupons, and similar returns or credits to payment of premiums for new
14 or additional or extended or renewed insurance, charges for payment of premium in installments, and all other
15 consideration for insurance from all kinds and classes of insurance, whether designated as a premium or
16 otherwise, received by a life insurer or written by an insurer other than a life insurer during the preceding calendar
17 year on account of policies covering property, subjects, or risks located, resident, or to be performed in Montana,
18 with proper proportionate allocation of premium as to property, subjects, or risks in Montana insured under
19 policies or contracts covering property, subjects, or risks located or resident in more than one state, after
20 deducting from the total direct premium income applicable cancellations, returned premiums, the unabsorbed
21 portion of any deposit premium, the amount of reduction in or refund of premiums allowed to industrial life
22 policyholders for payment of premiums direct to an office of the insurer, all policy dividends, refunds, savings,
23 savings coupons, and other similar returns paid or credited to policyholders with respect to the policies. As to title
24 insurance, "premium" includes the total charge for the insurance. A deduction may not be made of the cash
25 surrender values of policies. Considerations received on annuity contracts may not be included in total direct
26 premium income and are not subject to tax.

27 (2) (a) Except as provided in ~~subsection~~ subsections (2)(b) and (2)(c), coincident with the filing of the
28 tax report referred to in subsection (1) and subject to 33-2-709, each insurer shall pay to the commissioner a tax
29 on the net premiums computed at the rate of 2.75%.

30 (b) All casualty insurers issuing policies of legal professional liability insurance pursuant to 33-1-206 shall

1 pay to the commissioner a tax on the net premiums derived from legal professional liability insurance computed
2 at a rate of 0.75%.

3 (c) A dormant captive insurer that has a valid certificate of dormancy shall pay to the commissioner an
4 annual dormancy tax of \$1,000 as provided in [section 1].

5 (3) That portion of the tax paid under this section by an insurer on account of premiums received for fire
6 insurance must be separately specified in the report required by the commissioner for apportionment as provided
7 by law. When insurance against fire is included with insurance of property against other perils at an undivided
8 premium, the insurer shall make a reasonable allocation from the entire premium to the fire portion of the
9 coverage as must be stated in the report and as may be approved or accepted by the commissioner.

10 (4) With respect to authorized insurers, the premium tax provided by this section or the annual dormancy
11 tax under [section 1] must be payment in full and in lieu of all other demands for any and all state, county, city,
12 district, municipal, and school taxes, licenses, fees, and excises of whatever kind or character, excepting only
13 those prescribed by this code, taxes on real and tangible personal property located in this state, and taxes
14 payable under 50-3-109.

15 (5) The commissioner may suspend or revoke the certificate of authority of any insurer that fails to pay
16 its taxes as required under this section.

17 (6) In addition to the penalty provided for in subsection (5), the commissioner may impose on an insurer
18 who fails to pay the tax required under this section a fine of \$100 plus interest on the delinquent amount at the
19 annual interest rate of 12%.

20 (7) The commissioner may by rule provide a quarterly schedule for payment of portions of the premium
21 tax under this section during the year in which tax liability is accrued."
22

23 **Section 3.** Section 33-28-105, MCA, is amended to read:

24 **"33-28-105. Formation of captive insurance companies.** (1) A captive insurance company must be
25 formed or organized as a business entity as provided in this chapter.

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

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

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

1 (c) organized as a reciprocal insurer under Title 33, chapter 5, except that the requirements of
2 33-5-201(1) do not apply; or

3 (d) organized as a limited liability company.

4 (3) A captive insurance company incorporated or organized in this state must be incorporated or
5 organized by at least one incorporator or organizer who is a resident of this state.

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

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

12 (ii) the character, reputation, financial responsibility, insurance experience, and business qualifications
13 of any officers, directors, or managing members; and

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

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

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

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

25 (6) (a) At least one of the members of the board of directors of a captive insurance company must be
26 a resident of this state. A captive risk retention group must have a minimum of five directors.

27 (b) In the case of a captive insurance company formed as a limited liability company, at least one of the
28 managers must be a resident of the state. A captive risk retention group formed as a limited liability company
29 must have a minimum of five managers.

30 (c) In case of a reciprocal insurer, at least one of the members of the subscribers' advisory committee

1 must be a resident of the state. A captive risk retention group formed as a reciprocal insurer must have a
2 minimum of five members of the subscribers' advisory committee.

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

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

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

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

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

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

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

18 (c) (i) A captive insurance company formed as a reciprocal insurer has the privileges and is subject to
19 the provisions of Title 33, chapter 5, except 33-5-201(1), in addition to the applicable provisions of this chapter.
20 If there is a conflict between Title 33, chapter 5, and this chapter, the provisions of this chapter control.

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

24 (d) A captive risk retention group has the privileges and is subject to the provisions of Title 33, chapter
25 11, and this chapter. If there is a conflict between Title 33, chapter 11, and this chapter, the provisions of this
26 chapter prevail.

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

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

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

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

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

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14 **Section 4.** Section 33-28-108, MCA, is amended to read:

15 **"33-28-108. Examinations and investigations.** (1) (a) The commissioner or some competent person
16 appointed by the commissioner shall examine the affairs, transactions, accounts, records, and assets of each
17 captive insurance company as often as the commissioner considers advisable but no less frequently than every
18 5 years. This section does not apply to a captive insurance company operating under a certificate of dormancy
19 as provided in [section 1].

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

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

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

28 (4) (a) Subsection (3) does not prevent the commissioner from using information obtained pursuant to
29 this section in furtherance of the commissioner's regulatory authority under Title 33. The commissioner may, in
30 the commissioner's discretion, grant access to information obtained pursuant to this section to public officers

1 having jurisdiction over the regulation of insurance in any other state or country or to law enforcement officers
2 of this state or any other state or agency of the federal government at any time, as long as the officers receiving
3 the information agree in writing to hold it in a manner consistent with this section.

4 (b) Captive risk retention group reports produced pursuant to the examination requirements of this
5 section are public records as defined in 2-6-1002.

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

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

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

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15 **NEW SECTION. Section 5. Codification instruction.** [Section 1] is intended to be codified as an
16 integral part of Title 33, chapter 28, and the provisions of Title 33, chapter 28, apply to [section 1].

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18 **NEW SECTION. Section 6. Effective date.** [This act] is effective on passage and approval.

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