



AN ACT REVISING LAWS RELATING TO INSURANCE ENTITY ORGANIZATIONAL FILINGS WITH THE COMMISSIONER OF INSURANCE AND THE SECRETARY OF STATE; PROVIDING FOR A TAX CLEARANCE CERTIFICATE TO BE ISSUED DIRECTLY BY THE COMMISSIONER OF INSURANCE FOR AUTHORIZED INSURANCE COMPANIES; REMOVING REQUIREMENTS FOR TRIPPLICATE FILINGS WITH THE COMMISSIONER OF INSURANCE AND THE SECRETARY OF STATE; AMENDING SECTIONS 15-31-552, 15-31-553, 33-3-201, 33-3-202, 33-3-203, 33-4-202, 33-4-203, 33-4-204, AND 33-28-105, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 15-31-552, MCA, is amended to read:

"15-31-552. Corporation dissolution or withdrawal certificates and tax clearance certificates furnished. (1) For purposes of voluntary withdrawal or dissolution as set forth in 35-1-944, upon request of a corporation, the department of revenue may furnish to it a dissolution or withdrawal certificate verifying that the corporation has filed all applicable returns and has paid all taxes owing the state up to the date of the request for dissolution or withdrawal.

(2) Upon final withdrawal or dissolution, the department may furnish to a corporation a tax clearance certificate verifying that the corporation has filed all applicable returns and that all taxes have been paid through and including the corporation's final year of existence in Montana.

(3) For an authorized insurance company regulated under Title 33, the commissioner of insurance may furnish the certificate verifying that the corporation has filed all applicable returns and that taxes have been paid through and including the corporation's final year of existence in Montana."

Section 2. Section 15-31-553, MCA, is amended to read:

"15-31-553. Fees to reimburse department for costs -- deposit in general fund. All moneys money collected under 15-31-551 and 15-31-552 ~~shall be required~~ must be used to reimburse the department of revenue

and the commissioner of insurance for costs involved in the preparation of the copies and certificates. All ~~such moneys~~ money collected ~~shall~~ must go into the general fund."

Section 3. Section 33-3-201, MCA, is amended to read:

"33-3-201. Incorporation. (1) This section applies to stock and mutual insurers incorporated in this state.

(2) Five or more individuals, none of whom are less than 18 years of age, may incorporate a stock insurer. Ten or more ~~of~~ individuals, none of whom are less than 18 years of age, may incorporate a mutual insurer. At least a majority of the incorporators must be citizens of the United States. At least a majority of the incorporators must be residents of this state.

(3) The incorporators shall execute articles of incorporation ~~in triplicate~~ and acknowledge their execution in the same manner as provided by law for the acknowledgment of deeds. The articles of incorporation must state the purpose for which the corporation is formed and must show:

(a) the name of the corporation. If a mutual corporation, the word "mutual" must be a part of the name. An alternative name or names may be specified for use in jurisdictions where a conflict of name with that of another insurer or organization might otherwise prevent the corporation from being authorized to transact insurance in that jurisdiction.

(b) the duration of its existence, which may be perpetual;

(c) the kinds of insurance, as defined in this code, which the corporation is formed to transact;

(d) if a stock corporation, its authorized capital stock, the number of shares of common stock, and the par value of each share. The par value must be at least \$1. Shares without par value or other than one class of voting common stock are not authorized. The articles of incorporation may limit or deny present or future stockholders preemptive or preferential rights to acquire additional issues of the stock, bonds, debentures, or other obligations convertible into stock, of the corporation, subject to the laws of Montana fixing the required representation and proportion of outstanding capital stock required to be represented and voted, for specified action, at any and all corporate meetings, elections, votes, or consent proceedings.

(e) if a stock corporation, the extent, if any, to which shares of its stock are subject to assessment;

(f) if a stock corporation, the number of shares subscribed, if any, by each incorporator;

(g) if a mutual corporation, the maximum contingent liability of its members, other than as to

nonassessable policies, for payment of losses and expenses incurred. Any liability must be stated in the articles of incorporation but may not be less than one or more than six times the premium for the member's policy at the annual premium rate for a term of 1 year.

(h) the minimum, not less than 5, and the maximum, not more than 21, number of directors who constitute the board of directors and conduct the affairs of the corporation, and the names, addresses, and terms of the members of the initial board of directors. The term of office of initial directors may not be for more than 1 year after the date of incorporation.

(i) the name of the county, and the city, town, or place within the county, in which its principal office or principal place of business is to be located in this state;

(j) any other provisions, not inconsistent with law, considered appropriate by the incorporators;

(k) the name and residence address of each incorporator and the citizenship of each incorporator who is not a citizen of the United States."

Section 4. Section 33-3-202, MCA, is amended to read:

"33-3-202. Articles of incorporation -- ~~filing and approval.~~ (1) The incorporators of a proposed domestic insurer shall deliver ~~the triplicate originals of the proposed~~ articles of incorporation to the commissioner. The commissioner shall examine the proposed articles of incorporation. If the commissioner finds that the articles comply with this chapter and are not in conflict with the constitution and laws of the United States or of this state, the commissioner shall approve ~~in writing each set of~~ the articles. However, if the commissioner finds that the proposed insurer would not be eligible for a certificate of authority under 33-2-112, the commissioner shall refuse to approve the articles of incorporation ~~and shall return them to the proposed incorporators, together with a written statement of~~ and shall provide in writing the reasons for the refusal. The commissioner shall forward the approved articles and the applicable fees to the secretary of state. ~~The commissioner shall forward the approved articles of incorporation to the incorporators. The incorporators shall subsequently file one set of the articles of incorporation with the secretary of state and one set certified by the secretary of state with the commissioner. The remaining set of approved~~ articles must be made a part of the corporation's record.

(2) If the commissioner finds that the proposed articles of incorporation do not comply with law, the commissioner shall refuse to approve the proposed articles of incorporation ~~and shall return all sets of the proposed articles of incorporation to the proposed incorporators, together with~~ and shall provide a written

statement of the reasons for the refusal.

(3) The corporation has legal existence as a corporation upon the issuance of the certificate of incorporation by the secretary of state ~~and completion of the filing with the commissioner required in subsection (4),~~ but the corporation may not transact business as an insurer until it has qualified for and received from the commissioner a certificate of authority as provided in this title.

(4) A copy of the certificate of incorporation, certified by the secretary of state, is admissible in all the courts of this state as prima facie evidence of proper incorporation."

Section 5. Section 33-3-203, MCA, is amended to read:

"33-3-203. Amendment of articles of incorporation -- grounds for disapproval. (1) A domestic stock insurer may amend its articles of incorporation for any lawful purpose by written authorization of the holders of a majority of the voting power of its outstanding capital stock or by affirmative vote of a majority voting at a lawful meeting of stockholders of which the notice given to stockholders included notice of the proposal to amend.

(2) A domestic mutual insurer may amend its articles of incorporation for any lawful purpose by affirmative vote of a majority of those of its members present or represented by proxy at a lawful meeting of its members of which the notice given members included notice of the proposal to amend.

(3) Upon adoption of an amendment, the insurer shall ~~make in triplicate under its corporate seal a certificate, sometimes referred to as "articles of amendment", setting forth~~ set forth the amendment and the date and manner of the amendment's adoption in articles of amendment. The ~~certificate~~ articles of amendment must be executed by the insurer's president or vice president and secretary or assistant secretary and acknowledged by them before an officer authorized by law to take acknowledgments of deeds. The insurer shall deliver to the commissioner ~~the triplicate originals of the certificate~~ articles of amendment. If the commissioner finds that the ~~certificate~~ articles of amendment and ~~amendments~~ the amendment comply with law, the commissioner shall ~~approve in writing each of the triplicate originals and return them to the insurer~~ amendment must be approved. The insurer shall subsequently file one set of endorsed articles of amendment with the secretary of state, shall file one set with the commissioner, bearing the certification of the secretary of state, and shall retain the remaining ~~set in the corporate records~~. The amendment is effective when ~~the filings have been completed~~ it has been filed with the secretary of state.

(4) If the commissioner finds that the proposed amendment or ~~certificate~~ does the articles of amendment

do not comply with the law, the commissioner may not approve the amendment or certificate the articles of amendment and shall return the triplicate certificate of amendment to the insurer, together with provide a written statement of reasons for nonapproval. The filing fee is not returnable.

(5) If an amendment of articles of incorporation would reduce the authorized capital stock of a stock insurer below the amount then outstanding, the commissioner may not approve the amendment if the commissioner has reason to believe that the interests of policyholders or creditors of the insurer would be materially prejudiced by the reduction. If a reduction of capital stock is realized, the insurer may require the return of the original certificates of stock held by each stockholder for exchange for new certificates for the number of shares as the stockholder is then entitled in the proportion that the reduced capital bears to the amount of capital stock outstanding as of immediately prior to the effective date of the reduction."

Section 6. Section 33-4-202, MCA, is amended to read:

"33-4-202. Declaration of intention to incorporate -- articles of incorporation -- fee. (1) The individuals proposing to form a farm mutual insurer as referred to in 33-4-201 shall file with the commissioner:

(a) a declaration of their intention to form the corporation signed by at least 100 ~~incorporators~~ persons if a proposed state mutual insurer or by at least 25 ~~incorporators~~ persons if a proposed county mutual insurer; and

(b) ~~three copies of~~ proposed articles of incorporation executed by three or more of the incorporators. The signatures of the incorporators must be notarized.

(2) The articles of incorporation must state:

(a) the name of the corporation. If a state mutual insurer, the words "farm mutual" must be a part of the name; if a county mutual insurer, the name must contain the words "farm mutual" or "rural mutual" together with the name of the county in which its principal place of business is to be located. The name may not be so similar to one already used by a corporation in this state as to be misleading.

(b) if a county mutual insurer, the name of the county or counties in which the corporation is to transact insurance and the address where its principal business office will be located;

(c) if a state mutual insurer, the location of its principal business office, which must be located in this state;

(d) the objects and purposes for which the corporation is formed;

- (e) whether the insurer intends to transact business on the cash premium plan or the assessment plan;
- (f) the duration of the corporation's existence, which may be perpetual;
- (g) the number of its directors, which may not be less than 5 or more than 11, and the names and addresses of the members of the initial board of directors appointed to manage the affairs of the corporation until the first annual meeting of the members at which time successors must be elected and qualified;
- (h) other provisions, not inconsistent with law, considered appropriate by the incorporators;
- (i) the names, residences, and addresses of the ~~incorporators~~ persons signing the declaration under subsection (1)(a), and the value of their property to be insured in the county or counties where the operations of the corporation are to be transacted.

~~(3) At the time of filing of the articles of incorporation as provided in subsection (1), the incorporators shall pay to the commissioner a filing fee of \$10. The commissioner shall deposit the fees with the state treasurer to the credit of the general fund."~~

Section 7. Section 33-4-203, MCA, is amended to read:

"33-4-203. Approval of articles -- commencement of corporate existence. (1) If the commissioner finds the proposed articles of incorporation to be in accordance with the provisions of this chapter and not in conflict with the constitution and laws of the United States or of this state, the ~~commissioner shall make a certificate of the facts~~ articles must be approved. The commissioner shall forward the approved articles and the applicable fees to the secretary of state.

(2) If the commissioner considers the name of the proposed corporation to be so similar to one already appropriated by another company or corporation as to be likely to mislead the public, the commissioner shall reject the name applied for and shall notify the incorporators of the rejection.

~~(3) When the proposed articles of incorporation have been approved by the commissioner, the commissioner shall endorse the approval upon each set of the articles and forward three sets of articles to the incorporators. The incorporators shall file, with the required filing fee, one of the sets of articles with the secretary of state and one set certified by the secretary of state with the commissioner. The remaining set of articles must be made a part of the corporation's records.~~

~~(4)(3) The corporation has legal existence upon the approval of the articles by the commissioner and completion of the filings required in subsection (3);~~ issuance of the certificate of incorporation by the secretary

~~of state, but it may not transact business as an insurer until it has obtained a certificate of authority as provided in 33-4-505~~ obtained a certificate of authority as provided in 33-4-505."

Section 8. Section 33-4-204, MCA, is amended to read:

"33-4-204. Amendment of articles -- change of status. (1) A farm mutual insurer may, by a vote of two-thirds of its members present at any annual meeting or at any special meeting called for that purpose, amend its articles of incorporation to extend its corporate duration or any other particular within the scope of this chapter by causing amended articles to be filed in the same form and manner as required for original articles of incorporation.

(2) (a) A county mutual insurer may change its status to that of a state mutual insurer by amending its articles of incorporation pursuant to the requirements of this section.

(b) A county mutual insurer that changes its status to that of a state mutual insurer shall conform with all requirements for a state mutual insurer under this chapter ~~upon its articles of amendment being certified by the commissioner.~~

(3) (a) A state mutual insurer may change its status to that of a county mutual insurer by amending its articles of incorporation pursuant to this section.

(b) A state mutual insurer that changes its status to that of a county mutual insurer shall conform with all requirements for a county mutual insurer under this chapter ~~upon its articles of amendment being certified by the commissioner.~~

(4) The commissioner shall review the amended articles for compliance with this title. The amended articles of incorporation may be signed only by the president and secretary of the corporation ~~and attested by the corporate seal.~~ Notice of the proposed amendment must be contained in the notice of the annual or special meeting."

Section 9. Section 33-28-105, MCA, is amended to read:

"33-28-105. Formation of captive insurance companies. (1) A captive insurance company must be 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 members of its association or associations;

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

(d) organized as a manager-managed limited liability company.

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

(4) (a) In the case of a captive insurance company formed as a business entity ~~and before the organizational documents are transmitted to the secretary of state~~, the organizers shall file a copy of the ~~proposed~~ organizational documents with the commissioner ~~and a petition with the commissioner requesting the commissioner to issue a certificate that finds that the establishment and maintenance of the proposed business entity will promote the general good of the state~~. In reviewing the petition filings, 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 any officers, directors, or managing members; and

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

(b) If the commissioner does not ~~issue a certificate~~ approve the filings or finds that the ~~proposed~~ 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~~ organizational documents ~~and shall return the draft to the proposed organizers, together with a written statement explaining the refusal~~.

(c) ~~If the commissioner issues a certificate and approves the draft organizational documents, the~~ The commissioner shall file ~~forward the certificate and an approved draft of organizational documents to the proposed organizers. The organizers shall prepare two sets of the approved organizational documents and shall file one set 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. A captive risk retention group must have a minimum of five directors.

(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. A captive risk retention group formed as a limited liability company must have a minimum of five managers.

(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. A captive risk retention group formed as a reciprocal insurer must have a minimum of five members of the subscribers' advisory committee.

(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~~ find that the establishment and maintenance of the proposed association will promote the general good of the state. In reviewing the ~~petition request~~, 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 request~~ 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, except 33-5-201(1), 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.

(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 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 33-28-111 and 33-28-306, the provisions of Title 33, chapter 3, pertaining to mergers, consolidations, conversions, mutualizations, and voluntary dissolutions 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 authorization and maintenance of the branch operation will promote the general good of the state. The foreign captive insurance company 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 10. Section 35-1-944, MCA, is amended to read:

"35-1-944. State dissolution or withdrawal certificate. A decree of voluntary dissolution may not be made and entered by a court, nor shall the clerk of the district court of a county or secretary of state file a voluntary dissolution decree or file any other document by which the term of existence of a corporation is terminated, except a decree of involuntary dissolution in an action brought by the secretary of state. The secretary of state may not file an application for a certificate of withdrawal by a foreign corporation of its right to do intrastate business in the state unless the corporation obtains from the department of revenue and files with the court, clerk of the district court, or secretary of state, as part of the original instrument effecting the dissolution or withdrawal, a dissolution or withdrawal certificate issued pursuant to 15-31-552(1) verifying that the corporation has filed all applicable returns and has paid all taxes owing the state up to the date of the request for dissolution or

withdrawal. For an authorized insurance company regulated under Title 33, the authorized insurance company may obtain a tax clearance certificate from the commissioner of insurance. The issuance of the dissolution or withdrawal certificate or tax clearance certificate does not relieve the corporation from liability for taxes, penalties, or interest due the state of Montana, including taxes, penalties, or interest incurred after the date of dissolution."

Section 11. Effective date. [This act] is effective July 1, 2019.

- END -

I hereby certify that the within bill,
HB 0085, originated in the House.

Speaker of the House

Signed this _____ day
of _____, 2019.

Chief Clerk of the House

President of the Senate

Signed this _____ day
of _____, 2019.

HOUSE BILL NO. 85
INTRODUCED BY G. DEVRIES
BY REQUEST OF THE STATE AUDITOR

AN ACT REVISING LAWS RELATING TO INSURANCE ENTITY ORGANIZATIONAL FILINGS WITH THE COMMISSIONER OF INSURANCE AND THE SECRETARY OF STATE; PROVIDING FOR A TAX CLEARANCE CERTIFICATE TO BE ISSUED DIRECTLY BY THE COMMISSIONER OF INSURANCE FOR AUTHORIZED INSURANCE COMPANIES; REMOVING REQUIREMENTS FOR TRIPLICATE FILINGS WITH THE COMMISSIONER OF INSURANCE AND THE SECRETARY OF STATE; AMENDING SECTIONS 15-31-552, 15-31-553, 33-3-201, 33-3-202, 33-3-203, 33-4-202, 33-4-203, 33-4-204, AND 33-28-105, MCA; AND PROVIDING AN EFFECTIVE DATE.