



AN ACT GENERALLY REVISING THE CAPTIVE INSURANCE LAWS; REVISING DEFINITIONS; ELIMINATING CERTAIN FILING REQUIREMENTS SPECIFIC TO A CAPTIVE INSURANCE COMPANY FORMED AS A RECIPROCAL INSURER; REQUIRING INDIVIDUAL SERIES OF MEMBERS OF A LIMITED LIABILITY COMPANY FORMED AS A SPECIAL PURPOSE CAPTIVE INSURANCE COMPANY TO PAY A RENEWAL FEE; ALLOWING CAPTIVE INSURANCE COMPANIES TO MEET CAPITAL AND SURPLUS REQUIREMENTS THROUGH AN IRREVOCABLE LETTER OF CREDIT ISSUED BY A BANK CHARTERED BY ANOTHER STATE; REVISING LAWS RELATING TO FILINGS OF ORGANIZATIONAL DOCUMENTS FOR THE FORMATION OF CAPTIVE INSURANCE COMPANIES; REVISING BOARD OF DIRECTOR REQUIREMENTS FOR CAPTIVE RISK RETENTION GROUPS; REVISING LAWS RELATING TO CAPTIVE INSURANCE COMPANY MERGERS; REVISING LAWS RELATING TO PAYMENT OF TAXES BY PROTECTED CELL CAPTIVE INSURANCE COMPANIES; AMENDING LAWS RELATING TO PAYMENT OF A DORMANCY FEE FOR PROTECTED CELL CAPTIVE INSURANCE COMPANIES; AMENDING SECTIONS 33-28-101, 33-28-102, 33-28-104, 33-28-105, 33-28-107, 33-28-111, 33-28-201, 33-28-207, 33-28-301, AND 33-28-401, MCA; REPEALING SECTION 33-28-306, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

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

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

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

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

(a) owns, controls, or holds with power to vote all of the outstanding voting securities of an association

captive insurance company incorporated as a stock insurer;

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

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

(d) owns, controls, or holds with power to vote all of the outstanding ownership interests of an association captive insurance company organized as a limited liability company.

(3) "Association captive insurance company" means any company that insures risks of the members and the affiliated companies of members.

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

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

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

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

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

(8) "Captive insurance company" means any pure captive insurance company, association captive insurance company, protected cell captive insurance company, ~~incorporated cell captive insurance company~~, special purpose captive insurance company, or industrial insured captive insurance company formed or authorized under the provisions of this chapter.

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

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

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

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

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

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

- (i) that is not in a parent's corporate system consisting of the parent and affiliated companies;
- (ii) that has an existing, controlling contractual relationship with the parent or an affiliated company; and
- (iii) whose risks are managed by a pure captive insurance company.

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

(13) "Excess workers' compensation insurance" means, in the case of an employer that has insured or self-insured its workers' compensation risks in accordance with applicable state or federal law, insurance that is in excess of a specified per-incident or aggregate limit established by the commissioner.

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

~~(15) "Incorporated cell" means a protected cell of an incorporated cell captive insurance company that is organized as a corporation or other legal entity separate from the incorporated cell captive insurance company.~~

~~————(16) "Incorporated cell captive insurance company" means a protected cell captive insurance company that is established as a corporate or other legal entity separate from its incorporated cell that is organized as a separate legal entity.~~

~~(17)~~(15) "Industrial insured" means an insured:

- (a) who procures the insurance of any risk or risks by use of the services of a full-time employee acting as an insurance manager or buyer;
- (b) whose aggregate annual premiums for insurance on all risks total at least \$25,000; and
- (c) who has at least 25 full-time employees.

~~(18)~~(16) "Industrial insured captive insurance company" means any company that insures risks of the industrial insureds that comprise the industrial insured group and their affiliated companies.

~~(19)~~(17) "Industrial insured group" means any group that meets either of the following:

- (a) the group collectively:
 - (i) owns, controls, or holds with power to vote all of the outstanding voting securities of an industrial insured captive insurance company incorporated as a stock insurer; or
 - (ii) has complete voting control over an industrial insured captive insurance company incorporated as a

mutual insurer; or

(b) the group is a captive risk retention group.

~~(20)~~(18) "Member" means a sole proprietorship or business entity that belongs to an association.

~~(21)~~(19) "Mutual insurer" means a business entity without capital stock and with a governing body elected by the policyholders.

~~(22)~~(20) "Organizational document" means articles of incorporation, articles of organization, a subscribers' agreement, a charter, or any other document that establishes a business entity.

~~(23)~~(21) "Parent" means a sole proprietorship, business entity, or individual that directly or indirectly owns, controls, or holds with power to vote more than 50% of the outstanding voting securities of a captive insurance company.

~~(24)~~(22) "Participant" means a sole proprietorship or business entity and any affiliates that are insured by a protected cell captive insurance company in which the losses of the participant are limited through a participant contract to the participant's share of the assets of one or more protected cells identified in the participant contract.

~~(25)~~(23) "Participant contract" means a contract by which a protected cell captive insurance company insures the risks of a participant and limits the losses of each participant in the contract.

~~(26)~~(24) "Protected cell" means a separate account established by a protected cell captive insurance company formed or authorized under the provisions of this chapter, in which an identified pool of assets and liabilities are segregated and insulated, as provided in this chapter, from the remainder of the protected cell captive insurance company's assets and liabilities in accordance with the terms of one or more participant contracts to fund the liability of the protected cell captive insurance company with respect to the participants as set forth in the participant contracts. All protected cells must be incorporated.

~~(27)~~(25) "Protected cell assets" means all assets, contract rights, and general intangibles identified with and attributable to a specific protected cell of a protected cell captive insurance company.

~~(28)~~(26) "Protected cell captive insurance company" means any captive insurance company:

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

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

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

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

(e) that is incorporated or formed as a limited liability company.

~~(29)~~(27) "Protected cell liabilities" means all liabilities and other obligations identified with and attributable to a specific protected cell of a protected cell captive insurance company.

~~(30)~~(28) "Pure captive insurance company" means any company that insures risks of its parent and affiliated companies and controlled unaffiliated business entities.

~~(31)~~(29) "Sole proprietorship" means an individual doing business in a noncorporate form.

~~(32)~~(30) "Special purpose captive insurance company" means a captive insurance company that is formed or authorized under this chapter that does not meet the definition of any other type of captive insurance company defined in this section or is formed by, on behalf of, or for the benefit of a political subdivision of this state.

~~(33)~~(31) "Sponsor" means any entity that meets the requirements of 33-28-301 and 33-28-302 and is approved by the commissioner to provide all or part of the capital and surplus required by the applicable law and to organize and operate a protected cell captive insurance company."

Section 2. Section 33-28-102, MCA, is amended to read:

"33-28-102. Certificates of authority -- lines of business -- definition. (1) A captive insurance company, when permitted by its organizational document, may apply to the commissioner for a certificate of authority 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 special purpose captive insurance company may not provide insurance or reinsurance for risks unless approved by the commissioner;

(e) 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

(f) a protected cell captive insurance company may not insure any risks other than those of its participants.

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

(a) it first obtains from the commissioner a certificate of authority under this section;

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

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

(d) it appoints a registered agent to accept service of process, files the name and contact information and any subsequent changes regarding the registered agent with the commissioner, and agrees that whenever the registered agent cannot be found with reasonable diligence, the commissioner's office may act as an agent of the captive insurance company with respect to any action or proceeding and may be served in accordance with 33-1-603.

(3) (a) Before receiving a certificate of authority, ~~a captive insurance company shall:~~

~~(i) and~~ with respect to a captive insurance company formed as a business entity, a captive insurance company shall:

~~(A)~~(i) file with the commissioner a certified copy of its organizational documents, a statement under oath of an officer of the business entity showing its financial condition, and any other statements or documents required by the commissioner; and

~~(B)~~(ii) submit to the commissioner for approval a description of the coverages, deductibles, coverage

limits, and rates, together with any additional information that the commissioner may reasonably require; and

(iii) provide a statement to the commissioner that addresses the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) In addition to the requirements of subsection (3)(a), a captive insurance company formed as a reciprocal insurer must file with the commissioner a certified copy of the power of attorney of its attorney-in-fact, a certified copy of its subscribers' agreement, a statement under oath of its attorney-in-fact showing its financial condition, and any other statements or documents required by the commissioner;

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

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

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

(4) (a) Each captive insurance company, individual series of members as defined in 35-8-102 of a limited liability company, and protected cell, shall pay to the commissioner a nonrefundable fee of \$200 for the examining, investigating, and processing of its application, and the commissioner is authorized to retain legal,

financial, and examination services from outside the department, the reasonable cost of which may be charged to the applicant.

(b) The provisions of Title 33, chapter 1, part 4, apply to examinations, investigations, and processing conducted under the authority of this section. In addition, each captive insurance company, individual series of members as defined in 35-8-102 of a limited liability company, and protected cell shall pay a fee for the year of registration and a renewal fee for each subsequent year of \$300. ~~Individual series of members as defined in 35-8-102 of a limited liability company formed as a special purpose captive insurance company, incorporated protected cells, and unincorporated protected cells are not required to pay the registration or renewal fee under this subsection (4)(b).~~

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

Section 3. Section 33-28-104, MCA, is amended to read:

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

- (a) in the case of a pure captive insurance company, not less than \$250,000;
- (b) in the case of an industrial insured captive insurance company, including a captive risk retention group, not less than \$500,000;
- (c) in the case of an association captive insurance company, not less than \$500,000;
- (d) in the case of a special purpose captive insurance company, an amount determined by the commissioner after giving due consideration to the company's business plan, feasibility study, and pro forma documents, including the nature of the risks to be insured;
- (e) in the case of a protected cell captive insurance company, not less than \$500,000. However, if the protected cell captive insurance company does not assume any risks, the risks insured by the protected cells are homogenous, and if there are not more than 10 cells, the commissioner may reduce the amount required in this subsection (1)(e) to an amount not less than \$250,000.

(f) in the case of a branch captive insurance company, not less than the applicable amount of capital and

surplus required in subsections (1)(a) through (1)(e), as determined based upon the organizational form of the foreign captive insurance company. The minimum capital and surplus must be jointly held by the commissioner and the branch captive insurance company in a bank of the federal reserve system approved by the commissioner.

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

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

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

Section 4. 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 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, 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 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 commissioner shall 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)(4)~~ The capital stock of a captive insurance company incorporated as a stock insurer may be authorized with no par value.

~~(6)(5)~~ (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. A captive risk retention group formed as a limited liability company is not required to have a manager who is a resident of this state, but the company must maintain a board of directors, of which one board member must be a resident of the state.

(c) In case of a reciprocal insurer, at least one of the members of the subscribers' advisory committee must be a resident of the state. A captive risk retention group formed as a reciprocal insurer must have a minimum of five members of the subscribers' advisory committee.

~~(7)(6)~~ (a) A captive insurance company formed as a corporation or another business entity has the privileges and is subject to the provisions of general corporation law or the laws governing other business entities, as well as the applicable provisions contained in this chapter.

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

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

- ~~—— (i) the character, reputation, financial standing, and purposes of the organizers;~~
- ~~—— (ii) the character, reputation, financial responsibility, insurance experience, and business qualifications of the attorney-in-fact; and~~
- ~~—— (iii) any other factors that the commissioner considers appropriate.~~
- ~~—— (b) The commissioner may either approve the petition and issue the certificate or reject the petition in a written statement of the reasons for the rejection.~~

~~(c) (i)(7) (a) (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)(b)~~ 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)(8)~~ 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)(9) (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 5. Section 33-28-107, MCA, is amended to read:

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

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

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

(i) the required report is due 90 days after fiscal yearend; and

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

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

(d) On or before April 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 filings in subsection (4)(a) are required on an annual and quarterly basis."

Section 6. Section 33-28-111, MCA, is amended to read:

"33-28-111. Captive mergers. (1) A merger between captive stock insurers must meet the requirements of 33-3-217 and 33-28-105, except that the commissioner may provide notice to the public of the proposed merger prior to approval or disapproval of the merger in place of holding a hearing, at the commissioner's discretion.

(2) A merger between captive mutual insurers must meet the requirements of 33-3-218 and 33-28-105, except that the commissioner may provide notice to the public of the proposed merger prior to approval or disapproval of the merger in place of holding a hearing, at the commissioner's discretion.

(3) (a) An association captive insurance company or industrial insured group formed as a stock or mutual insurer may be converted to or merged with a reciprocal insurer pursuant to this section.

(b) A plan for conversion or merger must:

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

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

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

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

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

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

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

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

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

Section 7. Section 33-28-201, MCA, is amended to read:

"33-28-201. Tax on premiums collected. (1) (a) Each captive insurance company shall pay to the commissioner, on or before March 1 of each year, a tax on the direct premiums collected or contracted for on policies or contracts of insurance written by the captive insurance company during the year ending December 31, after deducting from the direct premiums subject to the tax the amounts paid to policyholders as return premiums, including dividends on unabsorbed premiums or premium deposits returned or credited to policyholders.

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

(i) 0.4% on the first \$20 million; and

(ii) 0.3% on each subsequent dollar collected.

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

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

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

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

(i) 0.225% on the first \$20 million of assumed reinsurance premiums;

(ii) 0.150% on the next \$20 million of assumed reinsurance premiums; and

(iii) 0.050% on each subsequent dollar of assumed reinsurance premiums.

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

(ii) In the calendar year in which a captive insurance company that is subject to the minimum tax is first authorized, the tax must be prorated on a quarterly basis as follows:

(A) \$5,000 if authorized in the first quarter;

(B) \$3,750 if authorized in the second quarter;

(C) \$2,500 if authorized in the third quarter; and

(D) \$1,250 if authorized in the fourth quarter.

(iii) In the calendar year in which a captive insurance company that is subject to the minimum tax surrenders its certificate of authority, the tax must be prorated on a quarterly basis as follows:

(A) \$1,250 if surrendered in the first quarter;

(B) \$2,500 if surrendered in the second quarter;

(C) \$3,750 if surrendered in the third quarter; and

(D) \$5,000 if surrendered in the fourth quarter.

(b) Each protected cell in a protected cell captive insurance company must be considered separately in determining the aggregate tax to be paid by the protected cell captive insurance company. If the protected cell

captive insurance company insures any risks in addition to the protected cells, the determination of the aggregate tax to be paid by the protected cell captive insurance company must also include the premium on those risks.

(c) Each series of members as defined in 35-8-102 of a limited liability company formed as a special purpose captive insurance company must be considered separately pursuant to this section, except that the minimum tax as described in subsection (3)(a) must be considered in the aggregate.

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

(5) Two or more captive insurance companies under common ownership and control must be taxed as though they were a single captive insurance company.

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

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

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

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

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

Section 8. Section 33-28-207, MCA, is amended to read:

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

(a) the definitions of commissioner and department provided in 33-1-202, property insurance provided in 33-1-210, casualty insurance provided in 33-1-206, life insurance provided in 33-1-208, health insurance coverage and group health plans provided in 33-22-140, and disability income insurance provided in 33-1-235;

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

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

(d) the provisions of 33-1-311, 33-1-603, 33-2-112, 33-3-431, 33-18-201, 33-18-203, 33-18-205, and

33-18-242;

(e) the provisions relating to dissolution and liquidation in Title 33, chapter 3, part 6, except that a pure captive insurance company may proceed with voluntary dissolution and liquidation after prior notice to and approval of the commissioner without following the provisions of Title 33, chapter 3, part 6; and

(f) the authority of the commissioner under 33-2-701(6) to impose a fine for failure to timely file an annual statement, except that the annual statement requirements in 33-28-107 apply.

(2) This chapter may not be construed as exempting a captive insurance company, its parent, or affiliated companies from compliance with the laws governing workers' compensation insurance.

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

(4) The following provisions apply to captive risk retention groups:

(a) those relating to actuarial opinions in Title 33, chapter 1, part 14;

(b) those relating to risk-based capital in Title 33, chapter 2, part 19; and

(c) those relating to insurance holding company systems in Title 33, chapter 2, part 11.

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

Section 9. Section 33-28-301, MCA, is amended to read:

"33-28-301. Protected cell captive insurance company. (1) One or more sponsors may form a protected cell captive insurance company, ~~which may be incorporated or unincorporated.~~

(2) A protected cell captive insurance company formed or authorized under the provisions of this chapter is subject to the following:

(a) (i) A protected cell captive insurance company may establish one or more protected cells with the prior written approval of the commissioner of a plan of operation or amendments submitted by the protected cell captive insurance company with respect to each protected cell.

(ii) Upon the written approval of the commissioner of the plan of operation, which must include but is not limited to the specific business objectives and investment guidelines of the protected cell, the protected cell captive insurance company in accordance with the approved plan of operation may attribute to the protected cell insurance obligations with respect to its insurance business.

(iii) A protected cell must have its own distinct name or designation that must include the words "protected cell" or "~~incorporated cell~~".

(iv) The protected cell captive insurance company shall transfer all assets attributable to a protected cell to one or more separately established and identified protected cell accounts bearing the name or designation of that protected cell. Protected cell assets must be held in the protected cell accounts for the purpose of satisfying the obligations of that protected cell.

(v) An incorporated protected cell may be organized and operated in any form of business organization authorized by the commissioner. Each ~~incorporated~~ protected cell of a protected cell captive insurance company must be treated as a captive insurance company for purposes of this chapter, ~~except for the application of that~~ the limit on maximum yearly aggregate taxes paid in 33-28-201 does not apply. Unless otherwise permitted by the articles of incorporation or other organizational document of a protected cell captive insurance company, each ~~incorporated~~ protected cell of the protected cell captive insurance company must have the same directors, secretary, and registered office as the protected cell captive insurance company.

(b) All attributions of assets and liabilities between a protected cell and the protected cell captive insurance company's general account must be in accordance with the plan of operation and participant contracts approved by the commissioner. No other attribution of assets and liabilities may be made by a protected cell captive insurance company between the protected cell captive insurance company's general account and its protected cells. Any attribution of assets and liabilities between the general account and a protected cell must be in cash or in readily marketable securities with established market values.

(c) The creation of a protected cell ~~does not create~~ creates, with respect to that protected cell, a legal person separate from the protected cell captive insurance company ~~unless the protected cell is an incorporated cell~~. Amounts attributed to a protected cell under this chapter, including assets transferred to a protected cell account, are owned by the protected cell, and the protected cell captive insurance company may not be a trustee or hold itself out to be a trustee with respect to those protected cell assets of that protected cell account. A protected cell captive insurance company may allow for a security interest to attach to protected cell assets or a protected cell account when the security interest is in favor of a creditor of the protected cell and is otherwise allowed under applicable law.

(d) This chapter may not be construed to prohibit the protected cell captive insurance company from contracting with or arranging for an investment adviser, commodity trading adviser, or other third party to manage

the protected cell assets of a protected cell if all remuneration, expenses, and other compensation of the third party are payable from the protected cell assets of that protected cell and not from the protected cell assets of other protected cells or the assets of the protected cell captive insurance company's general account.

(e) (i) A protected cell captive insurance company shall establish administrative and accounting procedures necessary to properly identify the one or more protected cells of the protected cell captive insurance company and the protected cell assets and protected cell liabilities attributable to the protected cells. The directors of a protected cell captive insurance company shall keep protected cell assets and protected cell liabilities:

(A) separate and separately identifiable from the assets and liabilities of the protected cell captive insurance company's general account; and

(B) attributable to one protected cell separate and separately identifiable from protected cell assets and protected cell liabilities attributable to other protected cells.

(ii) If the provisions of this subsection (2)(e) are violated, the remedy of tracing is applicable to protected cell assets commingled with protected cell assets of other protected cells or the assets of the protected cell captive insurance company's general account. The remedy of tracing may not be construed as an exclusive remedy.

(f) When establishing a protected cell, the protected cell captive insurance company shall attribute to the protected cell assets with a value at least equal to the reserves attributed to that protected cell.

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

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

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

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

cell.

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

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

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

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

(11) The business written by a protected cell captive insurance company, with respect to each cell, must be fronted by an insurance company authorized under the laws of any state or approved by the commissioner.

(12) If a protected cell captive insurance company's business is reinsured, with respect to each cell it must be:

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

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

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

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

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

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

Section 10. Section 33-28-401, MCA, is amended to read:

"33-28-401. 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~~ or protected cell as defined in 33-28-101 are 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:

- (i) be subject to or liable for the payment of any tax under 33-28-201;
- (ii) be subject to examinations as provided in 33-28-108.

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

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

Section 11. Repealer. The following section of the Montana Code Annotated is repealed:

33-28-306. Conversion to or merger with reciprocal insurer.

Section 12. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 13. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 14. Effective date. [This act] is effective July 1, 2019.

- END -

I hereby certify that the within bill,
SB 0055, originated in the Senate.

President of the Senate

Signed this _____ day
of _____, 2019.

Secretary of the Senate

Speaker of the House

Signed this _____ day
of _____, 2019.

SENATE BILL NO. 55
INTRODUCED BY D. SALOMON
BY REQUEST OF THE STATE AUDITOR

AN ACT GENERALLY REVISING THE CAPTIVE INSURANCE LAWS; REVISING DEFINITIONS; ELIMINATING CERTAIN FILING REQUIREMENTS SPECIFIC TO A CAPTIVE INSURANCE COMPANY FORMED AS A RECIPROCAL INSURER; REQUIRING INDIVIDUAL SERIES OF MEMBERS OF A LIMITED LIABILITY COMPANY FORMED AS A SPECIAL PURPOSE CAPTIVE INSURANCE COMPANY TO PAY A RENEWAL FEE; ALLOWING CAPTIVE INSURANCE COMPANIES TO MEET CAPITAL AND SURPLUS REQUIREMENTS THROUGH AN IRREVOCABLE LETTER OF CREDIT ISSUED BY A BANK CHARTERED BY ANOTHER STATE; REVISING LAWS RELATING TO FILINGS OF ORGANIZATIONAL DOCUMENTS FOR THE FORMATION OF CAPTIVE INSURANCE COMPANIES; REVISING BOARD OF DIRECTOR REQUIREMENTS FOR CAPTIVE RISK RETENTION GROUPS; REVISING LAWS RELATING TO CAPTIVE INSURANCE COMPANY MERGERS; REVISING LAWS RELATING TO PAYMENT OF TAXES BY PROTECTED CELL CAPTIVE INSURANCE COMPANIES; AMENDING LAWS RELATING TO PAYMENT OF A DORMANCY FEE FOR PROTECTED CELL CAPTIVE INSURANCE COMPANIES; AMENDING SECTIONS 33-28-101, 33-28-102, 33-28-104, 33-28-105, 33-28-107, 33-28-111, 33-28-201, 33-28-207, 33-28-301, AND 33-28-401, MCA; REPEALING SECTION 33-28-306, MCA; AND PROVIDING AN EFFECTIVE DATE.