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SENATE BILL NO. 28  
INTRODUCED BY D. SALOMON  
BY REQUEST OF THE STATE AUDITOR

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING CAPTIVE INSURANCE LAWS PERTAINING TO EXAMINATIONS BY THE COMMISSIONER OF INSURANCE; ELIMINATING THE REQUIREMENT TO CONDUCT AN EXAMINATION OF EACH CAPTIVE INSURANCE COMPANY AT LEAST EVERY FIVE YEARS; EXCEPTING CAPTIVE RISK RETENTION GROUPS; AMENDING SECTION 33-28-108, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

**Section 1.** Section 33-28-108, MCA, is amended to read:

**"33-28-108. Examinations and investigations.** (1) (a) ~~The~~ Except for captive risk retention groups as provided in subsection (1)(b), the commissioner or some competent person appointed by the commissioner shall ~~may~~ examine the affairs, transactions, accounts, records, and assets of each captive insurance company as often as the commissioner considers advisable ~~but no less frequently than every 5 years. This section does not apply to a captive insurance company operating under a certificate of dormancy as provided in 33-28-401.~~

(b) The commissioner or some competent person appointed by the commissioner shall examine the affairs, transactions, accounts, records, and assets of each captive risk retention group as often as the commissioner considers advisable, but no less frequently than every 5 years.

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

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

(3) Except as provided in subsection (4), all examination reports, preliminary examination reports or results, working papers, recorded information, documents, and their copies produced by, obtained by, or disclosed to the commissioner or any other person in the course of an examination made under this section are confidential, are not subject to subpoena, and may not be made public by the commissioner or an employee or

1 agent of the commissioner without the written consent of the company or upon court order.

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

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

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

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

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

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19 NEW SECTION. **Section 2. Effective date.** [This act] is effective on passage and approval.

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