

SENATE BILL NO. 52

INTRODUCED BY J. COHENOUR

BY REQUEST OF THE STATE AUDITOR

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING CAPTIVE INSURANCE LAWS; PROVIDING A PENALTY FOR FAILURE TO FILE ANNUAL STATEMENTS; CLARIFYING LANGUAGE REGARDING CERTIFICATES OF AUTHORITY FOR CAPTIVE INSURERS; ALLOWING FOR A PRO RATA DISTRIBUTION OF TAXES IN THE YEAR OF CLOSURE; CLARIFYING TAXATION OF SERIES MEMBERS OF SPECIAL PURPOSE CAPTIVES; AMENDING SECTIONS 33-28-101, 33-28-102, 33-28-104, 33-28-105, 33-28-108, 33-28-109, 33-28-201, 33-28-206, 33-28-207, 33-28-301, AND 33-28-302, MCA; AND PROVIDING AN IMMEDIATE 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; ~~or~~

(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.

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (i) that is not in a parent's corporate system consisting of the parent and affiliated companies;

27 (ii) that has an existing, controlling contractual relationship with the parent or an affiliated company; and

28 (iii) whose risks are managed by a pure captive insurance company.

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

30 (13) "Excess workers' compensation insurance" means, in the case of an employer that has insured or

1 self-insured its workers' compensation risks in accordance with applicable state or federal law, insurance that is
2 in excess of a specified per-incident or aggregate limit established by the commissioner.

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

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

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

10 (17) "Industrial insured" means an insured:

11 (a) who procures the insurance of any risk or risks by use of the services of a full-time employee acting
12 as an insurance manager or buyer;

13 (b) whose aggregate annual premiums for insurance on all risks total at least \$25,000; and

14 (c) who has at least 25 full-time employees.

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

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

18 (a) the group collectively:

19 (i) owns, controls, or holds with power to vote all of the outstanding voting securities of an industrial
20 insured captive insurance company incorporated as a stock insurer; or

21 (ii) has complete voting control over an industrial insured captive insurance company incorporated as a
22 mutual insurer; or

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

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

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

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

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

1 company.

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

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

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

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

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

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

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

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

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

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

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

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

28 (32) "Special purpose captive insurance company" means a captive insurance company that is formed
29 or ~~licensed~~ authorized under this chapter that does not meet the definition of any other type of captive insurance
30 company defined in this section.

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

4

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

6 **"33-28-102. ~~Licensing—authority~~ Certificates of authority -- lines of business -- definition.** (1) A
 7 captive insurance company, when permitted by its organizational document, may apply to the commissioner for
 8 a ~~license~~ certificate of authority to provide property insurance, casualty insurance, life insurance, disability income
 9 insurance, surety insurance, marine insurance, and health insurance coverage or a group health plan as defined
 10 in 33-22-140, except that:

11 (a) a pure captive insurance company may not insure any risks other than those of its parent and
 12 affiliated companies and controlled unaffiliated business entities;

13 (b) an industrial insured captive insurance company may not insure any risks other than those of the
 14 industrial insureds that comprise the industrial insured group and their affiliated companies;

15 (c) an association captive insurance company may not insure any risks other than those of the members
 16 or affiliated companies of members;

17 (d) a special purpose captive insurance company may not provide insurance or reinsurance for risks
 18 unless approved by the commissioner;

19 (e) a captive insurance company or a branch captive insurance company may not:

20 (i) provide personal lines of insurance, including but not limited to motor vehicle or homeowner's
 21 insurance coverage or any component of those coverages;

22 (ii) accept or cede reinsurance except as provided in 33-28-203;

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

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

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

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

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

1 certificate of authority under this section;

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

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

5 (d) it appoints a registered agent to accept service of process, files the name and contact information
6 and any subsequent changes regarding the registered agent with the commissioner, and agrees that whenever
7 the registered agent cannot be found with reasonable diligence, the commissioner's office may act as an agent
8 of the captive insurance company with respect to any action or proceeding and may be served in accordance with
9 33-1-603.

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

11 (i) with respect to a captive insurance company formed as a business entity:

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

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

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

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

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

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

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

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

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

1 confidential.

2 (4) (a) Each captive insurance company shall pay to the commissioner a nonrefundable fee of \$200 for
3 the examining, investigating, and processing of its application ~~for license~~, and the commissioner is authorized
4 to retain legal, financial, and examination services from outside the department, the reasonable cost of which may
5 be charged to the applicant.

6 (b) The provisions of Title 33, chapter 1, part 4, apply to examinations, investigations, and processing
7 conducted under the authority of this section. In addition, each captive insurance company shall pay a ~~license~~
8 fee for the year of registration and a renewal fee for each subsequent year of \$300. INDIVIDUAL SERIES OF MEMBERS
9 AS DEFINED IN 35-8-102 OF A LIMITED LIABILITY COMPANY FORMED AS A SPECIAL PURPOSE CAPTIVE INSURANCE COMPANY,
10 INCORPORATED PROTECTED CELLS, AND UNINCORPORATED PROTECTED CELLS ARE NOT REQUIRED TO PAY THE
11 REGISTRATION OR RENEWAL FEE UNDER THIS SUBSECTION (4)(B).

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

17 ~~(6) For the purposes of this section, "captive insurance company" means:~~

18 ~~— (a) a captive insurance company as defined in 33-28-101;~~

19 ~~— (b) an individual protected cell whether incorporated or unincorporated; or~~

20 ~~— (c) an individual series of members as defined in 35-8-102 of a limited liability company formed as a~~
21 ~~special purpose captive insurance company."~~

22

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

24 **"33-28-104. Minimum capital surplus -- letter of credit.** (1) A captive insurance company may not be
25 issued a ~~license~~ certificate of authority unless it possesses and maintains unimpaired paid-in capital and surplus
26 of:

27 (a) in the case of a pure captive insurance company, not less than \$250,000;

28 (b) in the case of an industrial insured captive insurance company, including a captive risk retention
29 group, not less than \$500,000;

30 (c) in the case of an association captive insurance company, not less than \$500,000;

1 (d) in the case of a special purpose captive insurance company, an amount determined by the
2 commissioner after giving due consideration to the company's business plan, feasibility study, and pro forma
3 documents, including the nature of the risks to be insured;

4 (e) in the case of a protected cell captive insurance company, not less than \$500,000. However, if the
5 protected cell captive insurance company does not assume any risks, the risks insured by the protected cells are
6 homogenous, and if there are not more than 10 cells, the commissioner may reduce the amount required in this
7 subsection (1)(e) to an amount not less than \$250,000.

8 (f) in the case of a branch captive insurance company, not less than the applicable amount of capital and
9 surplus required in subsections (1)(a) through (1)(e), as determined based upon the organizational form of the
10 foreign captive insurance company. The minimum capital and surplus must be jointly held by the commissioner
11 and the branch captive insurance company in a bank of the federal reserve system approved by the
12 commissioner.

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

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

17 (3) Capital and surplus may be in the form of cash, cash equivalent, or an irrevocable letter of credit on
18 a form prescribed by the commissioner and issued by a bank chartered by the state of Montana or a member
19 bank of the federal reserve system and approved by the commissioner."
20

21 **Section 4.** Section 33-28-105, MCA, is amended to read:

22 **"33-28-105. Formation of captive insurance companies.** (1) A captive insurance company must be
23 formed or organized as a business entity as provided in this chapter.

24 (2) An association captive insurance company or an industrial insured captive insurance company may
25 be:

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

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

29 (c) organized as a reciprocal insurer under Title 33, chapter 5; or

30 (d) organized as a limited liability company.

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

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

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

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

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

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

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

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

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

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

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

30 (7) (a) A captive insurance company formed as a corporation or another business entity has the

1 privileges and is subject to the provisions of general corporation law or the laws governing other business entities,
2 as well as the applicable provisions contained in this chapter.

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

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

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

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

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

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

15 (c) (i) A captive insurance company formed as a reciprocal insurer has the privileges and is subject to
16 the provisions of Title 33, chapter 5, in addition to the applicable provisions of this chapter. If there is a conflict
17 between Title 33, chapter 5, and this chapter, the provisions of this chapter control.

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

21 (d) A captive risk retention group has the privileges and is subject to the provisions of Title 33, chapter
22 11, and this chapter. If there is a conflict between Title 33, chapter 11, and this chapter, the provisions of this
23 chapter prevail.

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

27 (10) (a) With respect to a branch captive insurance company, the foreign captive insurance company
28 shall petition and request that the commissioner issue a certificate that finds that, after considering the character,
29 reputation, financial responsibility, insurance experience, and business qualifications of the officers and directors
30 of the foreign captive insurance company, the licensing authorization and maintenance of the branch operation

1 will promote the general good of the state. The foreign captive insurance company shall apply to the secretary
2 of state for a certificate of authority to transact business in this state after the commissioner's certificate is issued.

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

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

10

11 **Section 5.** Section 33-28-108, MCA, is amended to read:

12 **"33-28-108. Examinations and investigations.** (1) (a) The commissioner or some competent person
13 appointed by the commissioner shall examine the affairs, transactions, accounts, records, and assets of each
14 captive insurance company as often as the commissioner considers advisable but no less frequently than every
15 5 years.

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

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

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

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

30 (b) Captive risk retention group reports produced pursuant to the examination requirements of this

1 section are public writings as defined in 2-6-101.

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

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

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

10

11 **Section 6.** Section 33-28-109, MCA, is amended to read:

12 **"33-28-109. Suspension or revocation of license certificate of authority.** (1) The ~~license~~ certificate
13 of authority of a captive insurance company doing insurance business in this state may be suspended by the
14 commissioner for any of the following reasons:

15 (a) insolvency or impairment of capital or surplus;

16 (b) failure to meet and maintain the requirements of 33-28-104;

17 (c) refusal or failure to submit an annual report, as required by 33-28-107, or any other report or
18 statement required by law or by lawful order of the commissioner;

19 (d) failure to comply with the provisions of its own charter, bylaws, or other organizational document;

20 (e) failure to submit to examination or to perform any legal obligation as required by 33-28-108;

21 (f) use of methods that, although not otherwise specifically prohibited by law, nevertheless render its
22 operation detrimental or its condition unsound with respect to the public or to its policyholders;

23 (g) failure to pay the tax provided for in 33-28-201; or

24 (h) failure otherwise to comply with the laws of this state.

25 (2) If the commissioner finds, upon examination, hearing, or other evidence, that any captive insurance
26 company has committed any of the acts specified in subsection (1), the commissioner may suspend or revoke
27 the company's ~~license~~ certificate of authority if the commissioner considers it in the best interest of the public or
28 the policyholders of the captive insurance company."

29

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

1 **"33-28-201. Tax on premiums collected.** (1) (a) Each captive insurance company shall pay to the
 2 commissioner, on or before March 1 of each year, a tax on the direct premiums collected or contracted for on
 3 policies or contracts of insurance written by the captive insurance company during the year ending December
 4 31, after deducting from the direct premiums subject to the tax the amounts paid to policyholders as return
 5 premiums, including dividends on unabsorbed premiums or premium deposits returned or credited to
 6 policyholders.

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

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

9 (ii) 0.3% on each subsequent dollar collected.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 ~~(b) Aggregate taxes to be paid by a captive insurance company under this section may not exceed~~
8 ~~\$100,000 in any year.~~

9 ~~(c)(b)~~ Each protected cell in a protected cell captive insurance company must be considered separately
10 in determining the aggregate tax to be paid by the protected cell captive insurance company. If the protected cell
11 captive insurance company insures any risks in addition to the protected cells, the determination of the aggregate
12 tax to be paid by the protected cell captive insurance company must also include the premium on those risks.

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

16 (4) Aggregate taxes to be paid by a captive insurance company under this section may not exceed
17 \$100,000 in any year.

18 ~~(4)(5)~~ Two or more captive insurance companies under common ownership and control must be taxed
19 as though they were a single captive insurance company.

20 ~~(5)(6)~~ For the purposes of this section, "common ownership and control" means:

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

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

25 ~~(6)(7)~~ Only the branch business of a branch captive insurance company is subject to taxation under the
26 provisions of this section.

27 ~~(7)(8)~~ The tax provided for in this section must be calculated on an annual basis notwithstanding policies
28 or contracts of insurance or contracts of reinsurance issued on a multiyear basis. In the case of multiyear policies
29 or contracts, the premium must be prorated for the purposes of determining the tax."
30

1 **Section 8.** Section 33-28-206, MCA, is amended to read:

2 **"33-28-206. Rules.** The commissioner may adopt rules necessary to implement the provisions of this
3 chapter. The rules may include but are not limited to rules relating to forms, payment of fees, ~~licensing~~
4 authorization, capital and surplus, formation of companies, reports, examinations, investigations,
5 redomestications, captive risk retention groups, risk-based capital and holding company systems, letters of credit,
6 risks managed by pure captive insurance companies, standards to ensure that parent or affiliated companies are
7 able to exercise control of the risk management function of any controlled unaffiliated entities to be insured by
8 the pure captive insurance companies, the use of deductible reimbursement with workers' compensation, and
9 suspension and revocation of licenses."

10

11 **Section 9.** Section 33-28-207, MCA, is amended to read:

12 **"33-28-207. Applicable laws.** (1) The following apply to captive insurance companies:

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

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

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

19 (d) the provisions of 33-1-311, 33-1-603, 33-3-431, 33-18-201, 33-18-203, 33-18-205, and 33-18-242;

20 and

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

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

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

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

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

- 1 (a) those relating to actuarial opinions in Title 33, chapter 1, part 14;
2 (b) those relating to risk-based capital in Title 33, chapter 2, part 19; and
3 (c) those relating to insurance holding company systems in Title 33, chapter 2, part 11.
4 (5) Except as expressly provided in this chapter, the provisions of Title 33 do not apply to captive
5 insurance companies."
6

7 **Section 10.** Section 33-28-301, MCA, is amended to read:

8 **"33-28-301. Protected cell captive insurance company.** (1) One or more sponsors may form a
9 protected cell captive insurance company, which may be incorporated or unincorporated.

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

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

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

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

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

25 (v) An incorporated protected cell may be organized and operated in any form of business organization
26 authorized by the commissioner. Each incorporated protected cell of a protected cell captive insurance company
27 must be treated as a captive insurance company for purposes of this chapter, except for the application of
28 33-28-201. Unless otherwise permitted by the articles of incorporation or other organizational document of a
29 protected cell captive insurance company, each incorporated protected cell of the protected cell captive insurance
30 company must have the same directors, secretary, and registered office as the protected cell captive insurance

1 company.

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

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

16 (d) This chapter may not be construed to prohibit the protected cell captive insurance company from
17 contracting with or arranging for an investment adviser, commodity trading adviser, or other third party to manage
18 the protected cell assets of a protected cell if all remuneration, expenses, and other compensation of the third
19 party are payable from the protected cell assets of that protected cell and not from the protected cell assets of
20 other protected cells or the assets of the protected cell captive insurance company's general account.

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

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

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

30 (ii) If the provisions of this subsection (2)(e) are violated, the remedy of tracing is applicable to protected

1 cell assets commingled with protected cell assets of other protected cells or the assets of the protected cell
2 captive insurance company's general account. The remedy of tracing may not be construed as an exclusive
3 remedy.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 (iv) the trust and trust instrument must be in a form and with terms approved by the commissioner."
17

18 **Section 11.** Section 33-28-302, MCA, is amended to read:

19 **"33-28-302. Qualification of sponsors.** A sponsor of a protected cell captive insurance company must
20 be an insurer ~~licensed~~ authorized under the laws of any state, a reinsurer ~~licensed~~ authorized under the laws of
21 any state, a captive insurance company formed or ~~licensed~~ authorized under this chapter, an insurance producer
22 licensed under chapter 17 of this title and approved by the commissioner, or any other person approved by the
23 commissioner."
24

25 NEW SECTION. **Section 12. Saving clause.** [This act] does not affect rights and duties that matured,
26 penalties that were incurred, or proceedings that were begun before [the effective date of this act].
27

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

1

2 NEW SECTION. **Section 14. Effective date.** [This act] is effective on passage and approval.

3

- END -