

HOUSE BILL NO. 536

INTRODUCED BY T. BERRY

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING CAPTIVE INSURANCE LAWS TO APPLY TO ENTITIES FORMED OR OPERATED FOR THE BENEFIT OF A POLITICAL SUBDIVISION OF THE STATE; AMENDING SECTIONS 33-1-102 AND 33-28-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 33-1-102, MCA, is amended to read:

"33-1-102. (Temporary) Compliance required -- exceptions -- health service corporations -- health maintenance organizations -- governmental insurance programs -- service contracts. (1) A person may not transact a business of insurance in Montana or a business relative to a subject resident, located, or to be performed in Montana without complying with the applicable provisions of this code.

(2) The provisions of this code do not apply with respect to:

- (a) domestic farm mutual insurers as identified in chapter 4, except as stated in chapter 4;
(b) domestic benevolent associations as identified in chapter 6, except as stated in chapter 6; and
(c) fraternal benefit societies, except as stated in chapter 7.

(3) This code applies to health service corporations as prescribed in 33-30-102. The existence of the corporations is governed by Title 35, chapter 2, and related sections of the Montana Code Annotated.

(4) Except as provided in Title 33, chapter 40, part 1, this code does not apply to health maintenance organizations to the extent that the existence and operations of those organizations are governed by chapter 31.

(5) This code does not apply to workers' compensation insurance programs provided for in Title 39, chapter 71, parts 21 and 23, and related sections.

(6) The department of public health and human services may limit the amount, scope, and duration of services for programs established under Title 53 that are provided under contract by entities subject to this title. The department of public health and human services may establish more restrictive eligibility requirements and fewer services than may be required by this title.

(7) This code does not apply to the state employee group insurance program established in Title 2, chapter 18, part 8, or the Montana university system group benefits plans established in Title 20, chapter 25, part



1 13.

2 (8) This code does not apply to insurance funded through the state self-insurance reserve fund provided
3 for in 2-9-202.

4 (9) (a) Except as otherwise provided in Title 33, ~~chapter~~ chapters 22 and 28, this code does not apply
5 to any arrangement, plan, or interlocal agreement between political subdivisions of this state in which the political
6 subdivisions undertake to separately or jointly indemnify one another by way of a pooling, joint retention,
7 deductible, or self-insurance plan.

8 (b) Except as otherwise provided in Title 33, chapter 22, this code does not apply to any arrangement,
9 plan, or interlocal agreement between political subdivisions of this state or any arrangement, plan, or program
10 of a single political subdivision of this state in which the political subdivision provides to its officers, elected
11 officials, or employees disability insurance or life insurance through a self-funded program.

12 (10) (a) This code does not apply to the marketing of, sale of, offering for sale of, issuance of, making
13 of, proposal to make, and administration of a service contract.

14 (b) A "service contract" means a contract or agreement for a separately stated consideration for a
15 specific duration to perform the repair, replacement, or maintenance of property or to indemnify for the repair,
16 replacement, or maintenance of property if an operational or structural failure is due to a defect in materials or
17 manufacturing or to normal wear and tear, with or without an additional provision for incidental payment or
18 indemnity under limited circumstances, including but not limited to towing, rental, and emergency road service.
19 A service contract may provide for the repair, replacement, or maintenance of property for damage resulting from
20 power surges or accidental damage from handling. A service contract does not include motor club service as
21 defined in 61-12-301.

22 (11) (a) Subject to 33-18-201 and 33-18-242, this code does not apply to insurance for ambulance
23 services sold by a county, city, or town or to insurance sold by a third party if the county, city, or town is liable for
24 the financial risk under the contract with the third party as provided in 7-34-103.

25 (b) If the financial risk for ambulance service insurance is with an entity other than the county, city, or
26 town, the entity is subject to the provisions of this code.

27 (12) Except as provided in Title 33, chapter 40, part 1, this code does not apply to the self-insured student
28 health plan established in Title 20, chapter 25, part 14.

29 (13) This code does not apply to private air ambulance services that are in compliance with 50-6-320 and
30 that solicit membership subscriptions, accept membership applications, charge membership fees, and provide

1 air ambulance services to subscription members and designated members of their households.

2 (14) This code does not apply to guaranteed asset protection waivers that are governed by 30-14-151
3 through 30-14-157. (Terminates December 31, 2017--sec. 14, Ch. 363, L. 2013.)

4 **33-1-102. (Effective January 1, 2018) Compliance required -- exceptions -- health service**
5 **corporations -- health maintenance organizations -- governmental insurance programs -- service**
6 **contracts.** (1) A person may not transact a business of insurance in Montana or a business relative to a subject
7 resident, located, or to be performed in Montana without complying with the applicable provisions of this code.

8 (2) The provisions of this code do not apply with respect to:

9 (a) domestic farm mutual insurers as identified in chapter 4, except as stated in chapter 4;

10 (b) domestic benevolent associations as identified in chapter 6, except as stated in chapter 6; and

11 (c) fraternal benefit societies, except as stated in chapter 7.

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13 corporations is governed by Title 35, chapter 2, and related sections of the Montana Code Annotated.

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15 operations of those organizations are governed by chapter 31.

16 (5) This code does not apply to workers' compensation insurance programs provided for in Title 39,
17 chapter 71, parts 21 and 23, and related sections.

18 (6) The department of public health and human services may limit the amount, scope, and duration of
19 services for programs established under Title 53 that are provided under contract by entities subject to this title.
20 The department of public health and human services may establish more restrictive eligibility requirements and
21 fewer services than may be required by this title.

22 (7) This code does not apply to the state employee group insurance program established in Title 2,
23 chapter 18, part 8, or the Montana university system group benefits plans established in Title 20, chapter 25, part
24 13.

25 (8) This code does not apply to insurance funded through the state self-insurance reserve fund provided
26 for in 2-9-202.

27 (9) (a) Except as otherwise provided in Title 33, ~~chapter~~ chapters 22 and 28, this code does not apply
28 to any arrangement, plan, or interlocal agreement between political subdivisions of this state in which the political
29 subdivisions undertake to separately or jointly indemnify one another by way of a pooling, joint retention,
30 deductible, or self-insurance plan.

1 (b) Except as otherwise provided in Title 33, chapter 22, this code does not apply to any arrangement,
2 plan, or interlocal agreement between political subdivisions of this state or any arrangement, plan, or program
3 of a single political subdivision of this state in which the political subdivision provides to its officers, elected
4 officials, or employees disability insurance or life insurance through a self-funded program.

5 (10) (a) This code does not apply to the marketing of, sale of, offering for sale of, issuance of, making
6 of, proposal to make, and administration of a service contract.

7 (b) A "service contract" means a contract or agreement for a separately stated consideration for a
8 specific duration to perform the repair, replacement, or maintenance of property or to indemnify for the repair,
9 replacement, or maintenance of property if an operational or structural failure is due to a defect in materials or
10 manufacturing or to normal wear and tear, with or without an additional provision for incidental payment or
11 indemnity under limited circumstances, including but not limited to towing, rental, and emergency road service.
12 A service contract may provide for the repair, replacement, or maintenance of property for damage resulting from
13 power surges or accidental damage from handling. A service contract does not include motor club service as
14 defined in 61-12-301.

15 (11) (a) Subject to 33-18-201 and 33-18-242, this code does not apply to insurance for ambulance
16 services sold by a county, city, or town or to insurance sold by a third party if the county, city, or town is liable for
17 the financial risk under the contract with the third party as provided in 7-34-103.

18 (b) If the financial risk for ambulance service insurance is with an entity other than the county, city, or
19 town, the entity is subject to the provisions of this code.

20 (12) This code does not apply to the self-insured student health plan established in Title 20, chapter 25,
21 part 14.

22 (13) This code does not apply to private air ambulance services that are in compliance with 50-6-320 and
23 that solicit membership subscriptions, accept membership applications, charge membership fees, and provide
24 air ambulance services to subscription members and designated members of their households.

25 (14) This code does not apply to guaranteed asset protection waivers that are governed by 30-14-151
26 through 30-14-157."

27

28 **Section 2.** Section 33-28-101, MCA, is amended to read:

29 **"33-28-101. Definitions.** As used in this chapter, unless the context requires otherwise, the following
30 definitions apply:

- 1 (1) "Affiliated company" means any company in the same corporate system as a parent, an industrial
2 insured, or a member by virtue of common ownership, control, operation, or management.
- 3 (2) "Association" means any legal association of sole proprietorships or business entities that has been
4 in continuous existence for at least 1 year unless the 1-year requirement is waived by the commissioner and the
5 members of which collectively, or the association itself:
- 6 (a) owns, controls, or holds with power to vote all of the outstanding voting securities of an association
7 captive insurance company incorporated as a stock insurer;
- 8 (b) has complete voting control over an association captive insurance company incorporated as a mutual
9 insurer; or
- 10 (c) constitutes all of the subscribers of an association captive insurance company formed as a reciprocal
11 insurer.
- 12 (3) "Association captive insurance company" means any company that insures risks of the members and
13 the affiliated companies of members.
- 14 (4) "Branch business" means any insurance business transacted by a branch captive insurance company
15 in this state.
- 16 (5) "Branch captive insurance company" means any foreign captive insurance company licensed by the
17 commissioner to transact the business of insurance in this state through a business unit with a principal place
18 of business in this state.
- 19 (6) "Branch operations" means any business operations of a branch captive insurance company in this
20 state.
- 21 (7) (a) "Business entity" means a corporation, limited liability company, partnership, limited partnership,
22 limited liability partnership, or other legal entity formed by an organizational document.
- 23 (b) The term does not include a sole proprietor.
- 24 (8) "Captive insurance company" means any pure captive insurance company, association captive
25 insurance company, protected cell captive insurance company, incorporated cell captive insurance company,
26 special purpose captive insurance company, or industrial insured captive insurance company formed or licensed
27 under the provisions of this chapter.
- 28 (9) "Captive reinsurance company" means a captive insurance company licensed in this state that
29 reinsures the risk ceded by any other insurer.
- 30 (10) "Captive risk retention group" means a captive insurance risk retention group formed under the laws

1 of this chapter and pursuant to Title 33, chapter 11.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (a) the group collectively:

30 (i) owns, controls, or holds with power to vote all of the outstanding voting securities of an industrial

- 1 insured captive insurance company incorporated as a stock insurer; or
- 2 (ii) has complete voting control over an industrial insured captive insurance company incorporated as a
- 3 mutual insurer; or
- 4 (b) the group is a captive risk retention group.
- 5 (20) "Member" means a sole proprietorship or business entity that belongs to an association.
- 6 (21) "Mutual insurer" means a business entity without capital stock and with a governing body elected
- 7 by the policyholders.
- 8 (22) "Organizational document" means articles of incorporation, articles of organization, a partnership
- 9 agreement, a subscribers' agreement, a charter, or any other document that establishes a business entity.
- 10 (23) "Parent" means a sole proprietorship, business entity, or individual that directly or indirectly owns,
- 11 controls, or holds with power to vote more than 50% of the outstanding voting securities of a captive insurance
- 12 company.
- 13 (24) "Participant" means a sole proprietorship or business entity and any affiliates that are insured by a
- 14 protected cell captive insurance company in which the losses of the participant are limited through a participant
- 15 contract to the participant's share of the assets of one or more protected cells identified in the participant contract.
- 16 (25) "Participant contract" means a contract by which a protected cell captive insurance company insures
- 17 the risks of a participant and limits the losses of each participant in the contract.
- 18 (26) "Protected cell" means a separate account established by a protected cell captive insurance
- 19 company formed or licensed under the provisions of this chapter, in which an identified pool of assets and
- 20 liabilities are segregated and insulated, as provided in this chapter, from the remainder of the protected cell
- 21 captive insurance company's assets and liabilities in accordance with the terms of one or more participant
- 22 contracts to fund the liability of the protected cell captive insurance company with respect to the participants as
- 23 set forth in the participant contracts.
- 24 (27) "Protected cell assets" means all assets, contract rights, and general intangibles identified with and
- 25 attributable to a specific protected cell of a protected cell captive insurance company.
- 26 (28) "Protected cell captive insurance company" means any captive insurance company:
- 27 (a) in which the minimum capital and surplus required by applicable law are provided by one or more
- 28 sponsors;
- 29 (b) that is formed or licensed under the provisions of this chapter;
- 30 (c) that insures the risks of separate participants through participant contracts; and

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

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

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

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

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

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

15

16 NEW SECTION. **Section 3. Effective date.** [This act] is effective on passage and approval.

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