

HOUSE BILL NO. 419

INTRODUCED BY B. BECK

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A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING CAPTIVE INSURANCE COMPANY LAW; REVISING DEFINITIONS; REVISING MINIMUM CAPITAL SURPLUS REQUIREMENTS; ESTABLISHING REQUIREMENTS FOR THE OPERATION OF CAPTIVE INSURANCE COMPANIES AND FOR INTERACTION BETWEEN CAPTIVE INSURANCE COMPANIES AND THEIR PROTECTED CELLS; REVISING QUALIFICATION FOR PROTECTED CELL SPONSORS AND PARTICIPANTS; AND AMENDING SECTIONS 33-28-101, 33-28-102, 33-28-104, 33-28-107, 33-28-202, 33-28-301, 33-28-302, AND 33-28-304, MCA."

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.

(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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6            ~~(15)~~(17) "Industrial insured" means an insured:

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

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

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

11           ~~(16)~~(18) "Industrial insured captive insurance company" means any company that insures risks of the  
 12 industrial insureds that comprise the industrial insured group and their affiliated companies.

13           ~~(17)~~(19) "Industrial insured group" means any group that meets either of the following:

14           (a) the group collectively:

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

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

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

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

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

23           ~~(20)~~(22) "Organizational document" means articles of incorporation, articles of organization, a partnership  
 24 agreement, a subscribers' agreement, a charter, or any other document that establishes a business entity.

25           ~~(21)~~(23) "Parent" means a sole proprietorship, business entity, or individual that directly or indirectly  
 26 owns, controls, or holds with power to vote more than 50% of the outstanding voting securities of a captive  
 27 insurance company.

28           ~~(22)~~(24) "Participant" means a sole proprietorship or business entity and any affiliates that are insured  
 29 by a protected cell captive insurance company in which the losses of the participant are limited through a  
 30 participant contract to the participant's ~~pro-rata~~ share of the assets of one or more protected cells identified in the

1 participant contract.

2 ~~(23)~~(25) "Participant contract" means a contract by which a protected cell captive insurance company  
3 insures the risks of a participant and limits the losses of each participant in the contract.

4 ~~(24)~~(26) "Protected cell" means a separate account established by a protected cell captive insurance  
5 company formed or licensed under the provisions of this chapter, in which ~~assets are maintained for one or more~~  
6 participants an identified pool of assets and liabilities are segregated and insulated, as provided in this chapter,  
7 from the remainder of the protected cell captive insurance company's assets and liabilities in accordance with  
8 the terms of one or more participant contracts to fund the liability of the protected cell captive insurance company  
9 with respect to the participants as set forth in the participant contracts.

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

12 ~~(25)~~(28) "Protected cell captive insurance company" means any captive insurance company:

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

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

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

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

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

22 ~~(26)~~(30) "Pure captive insurance company" means any company that insures risks of its parent and  
23 affiliated companies and controlled unaffiliated business entities.

24 ~~(27)~~(31) "Sole proprietorship" means an individual doing business in a noncorporate form.

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

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

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

3           "**33-28-102. Licensing -- authority.** (1) A captive insurance company, when permitted by its  
4 organizational document, may apply to the commissioner for a license to provide property insurance, casualty  
5 insurance, life insurance, disability income insurance, surety insurance, marine insurance, and health insurance  
6 coverage or a group health plan as defined in 33-22-140, except that:

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

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

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

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

15           ~~(d)~~(e) a captive insurance company or a branch captive insurance company may not:

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

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

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

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

23           ~~(e)~~(f) a protected cell captive insurance company may not insure any risks other than those of its  
24 participant affiliated companies and controlled unaffiliated business entities.

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

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

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

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

30           (d) (i) it appoints a registered agent to accept service of process;

1 (ii) the name and contact information and any subsequent changes regarding the registered agent are  
2 filed with the commissioner; and

3 (iii) it agrees that whenever the registered agent cannot be found with reasonable diligence, the  
4 commissioner's office may act as an agent of the captive insurance company with respect to any action or  
5 proceeding and may be served in accordance with 33-1-603.

6 (3) (a) Before receiving a license, a captive insurance company shall:

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

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

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

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

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

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

19 (b) In the event of any subsequent material change in any of the items in the description provided for in  
20 subsection (3)(a), the captive insurance company shall submit to the commissioner for approval an appropriate  
21 revision and may not offer any additional kinds of insurance until a revision of the description is approved by the  
22 commissioner. The captive insurance company shall inform the commissioner of any change in rates within 30  
23 days of the adoption of the change.

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

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

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

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

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

1 applicable; and

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

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

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

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

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

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

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

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

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

28 (4) (a) Each captive insurance company shall pay to the commissioner a nonrefundable fee of \$200 for  
29 the examining, investigating, and processing of its application for license, and the commissioner is authorized  
30 to retain legal, financial, and examination services from outside the department, the reasonable cost of which may

1 be charged to the applicant.

2 (b) The provisions of Title 33, chapter 1, part 4, apply to examinations, investigations, and processing  
3 conducted under the authority of this section. In addition, each captive insurance company shall pay a license  
4 fee for the year of registration and a renewal fee for each subsequent year of \$300.

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

9

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

11 **"33-28-104. Minimum capital surplus -- letter of credit.** (1) A captive insurance company may not be  
12 issued a license unless it possesses and maintains unimpaired paid-in capital and surplus of:

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

14 (b) in the case of an industrial insured captive insurance company, not less than \$500,000;

15 (c) in the case of an association captive insurance company, not less than ~~\$750,000~~ \$500,000; or

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

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

23 ~~(e)~~(f) in the case of a branch captive insurance company, not less than the applicable amount of capital  
24 and surplus required in subsections (1)(a) through ~~(1)(d)~~ (1)(e), as determined based upon the organizational  
25 form of the foreign captive insurance company. The minimum capital and surplus must be jointly held by the  
26 commissioner and the branch captive insurance company in a bank of the federal reserve system approved by  
27 the commissioner.

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

30 (2) The commissioner may require additional capital and surplus based upon the type, volume, and



1 nature of insurance business transacted.

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

5

6 **Section 4.** Section 33-28-107, MCA, is amended to read:

7 **"33-28-107. Reports and statements.** (1) A captive insurance company is not required to make an  
8 annual report except as provided in this section.

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

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

17 (i) the required report is due ~~60~~ 90 days after fiscal yearend; and

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

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

25 (d) On or before ~~March~~ April 1 of each year, each branch captive insurance company shall submit to the  
26 commissioner a copy of all reports and statements required to be filed under the laws in which the foreign captive  
27 insurance company is formed, verified by oath of two of its executive officers. If the commissioner is satisfied that  
28 the annual report filed by the foreign captive insurance company in its domiciliary jurisdiction provides adequate  
29 information concerning the financial condition of the foreign captive insurance company, the commissioner may  
30 waive the requirement for completion of the captive annual statement for business written in the foreign

1 jurisdiction.

2 (3) The commissioner shall consider financial statements filed pursuant to this section as confidential.

3 (4) (a) Captive risk retention groups shall file reports and statements in accordance with Title 33, chapter  
4 2, part 7, except that a captive risk retention group may file using generally accepted accounting principles. The  
5 filing may include letters of credit that are established, issued, or confirmed by a bank chartered in this state, a  
6 member of the federal reserve system, or a bank chartered by another state if that state-chartered bank is  
7 acceptable to the commissioner.

8 (b) The commissioner may waive the RBC report required in 33-2-1903 for a captive risk retention group  
9 that files a report or statement pursuant to subsection (4)(a) or for a captive risk retention group that was formed  
10 in the last 2 years.

11 (c) The filings in subsection (4)(a) are required on an annual and quarterly basis."  
12

13 **Section 5.** Section 33-28-202, MCA, is amended to read:

14 **"33-28-202. Legal investments.** (1) (a) An industrial insured captive insurance company, an association  
15 captive insurance company, and a captive risk retention group shall comply with the investment requirements  
16 contained in Title 33, chapter 12, and the rules promulgated in accordance with these provisions.

17 (b) The commissioner may approve the use of alternative reliable methods of valuation and rating.

18 (c) When a captive insurance company's admitted assets total less than \$5 million, the commissioner  
19 may approve an investment of up to 20% of admitted assets in rated credit instruments in any one investment  
20 that meets the requirements of 33-12-303(1)(c).

21 (2) A pure captive insurance company or protected cell captive insurance company is not subject to any  
22 restrictions on allowable investments, except that the commissioner may prohibit or limit any investment that  
23 threatens the solvency or liquidity of the company.

24 (3) Only a pure captive insurance company may make loans to its parent company or affiliates. Loans  
25 to a parent company or any affiliate may not be made without prior written approval of the commissioner and must  
26 be evidenced by a note in a form approved by the commissioner. Loans of minimum capital and surplus funds  
27 required by 33-28-104 are prohibited."  
28

29 **Section 6.** Section 33-28-301, MCA, is amended to read:

30 **"33-28-301. Protected cell captive insurance company.** (1) One or more sponsors may form a

1 protected cell captive insurance company, which may be incorporated or unincorporated.

2 (2) A protected cell captive insurance company formed or licensed under the provisions of this chapter  
3 ~~may establish and maintain one or more protected cells to insure risks of one or more participants;~~ is subject to  
4 the following conditions:

5 (a) ~~The shareholders of the protected cell captive insurance company must be limited to its participants~~  
6 ~~and sponsors.~~

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

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

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

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

20 (v) An incorporated protected cell may be organized and operated in any form of business organization  
21 authorized by the commissioner. Each incorporated protected cell of a protected cell captive insurance company  
22 must be treated as a captive insurance company for purposes of this chapter, except for the application of  
23 33-28-201. Unless otherwise permitted by the articles of incorporation or other organizational document of a  
24 protected cell captive insurance company, each incorporated protected cell of the protected cell captive insurance  
25 company must have the same directors, secretary, and registered office as the protected cell captive insurance  
26 company.

27 (b) All attributions of assets and liabilities between a protected cell and the protected cell captive  
28 insurance company's general account must be in accordance with the plan of operation and participant contracts  
29 approved by the commissioner. No other attribution of assets and liabilities may be made by a protected cell  
30 captive insurance company between the protected cell captive insurance company's general account and its

1 protected cells. Any attribution of assets and liabilities between the general account and a protected cell must  
2 be in cash or in readily marketable securities with established market values.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24           ~~(j)~~(11) The business written by a protected cell captive insurance company, with respect to each cell,  
25 must be:

26           ~~(i)~~(a) fronted by an insurance company licensed under the laws of any state;

27           ~~(ii)~~(b) reinsured by a reinsurer authorized or approved by the commissioner; or

28           ~~(iii)~~(c) secured by a trust fund in the United States for the benefit of policyholders and claimants, which  
29 must be funded by an irrevocable letter of credit or other asset that is acceptable to the commissioner, and with  
30 the following requirements:

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

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

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

10           ~~(D)~~(iv) the trust and trust instrument must be in a form and with terms approved by the commissioner."  
 11

12           **Section 7.** Section 33-28-302, MCA, is amended to read:

13           "**33-28-302. Qualification of sponsors.** A sponsor of a protected cell captive insurance company must  
 14 be an insurer licensed under the laws of any state, a reinsurer licensed under the laws of any state, a captive  
 15 insurance company formed or licensed under this chapter, ~~or~~ an insurance producer licensed under chapter 17  
 16 of this title and approved by the commissioner, or any other person approved by the commissioner."  
 17

18           **Section 8.** Section 33-28-304, MCA, is amended to read:

19           "**33-28-304. Participants in protected cell captive insurance companies.** (1) ~~A~~ An individual or  
 20 business entity may be a participant in a protected cell captive insurance company.

21           (2) A sponsor may be a participant in a protected cell captive insurance company.

22           (3) A participant is not required to be a shareholder of a protected cell captive insurance company or its  
 23 affiliate.

24           ~~(4) A participant shall insure only its own risks through a protected cell captive insurance company."~~  
 25

- END -