

SENATE BILL 248

Introduced by Thayer, et al.

1/26	Introduced
1/26	Referred to Business & Industry
1/27	Fiscal Note Requested
1/31	Hearing
2/02	Fiscal Note Received
2/04	Fiscal Note Printed
2/06	Committee Report--Bill Passed as Amended
2/08	2nd Reading Passed
2/10	Rereferred to Business & Industry
2/17	Hearing
	Died in Committee

1 *Senate* BILL NO. *248*  
2 INTRODUCED BY *Stacy* *Major Cabral*  
3 *Cargill*  
4 A BILL FOR AN ACT ENTITLED: "AN ACT ADOPTING LAWS TO  
5 *Whalen* REGULATE MONTANA CAPTIVE INSURERS; AND AMENDING SECTIONS  
6 17-7-502 AND 33-2-708, MCA."  
7  
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
9 NEW SECTION. Section 1. Short title. [Sections 1  
10 through 19] may be cited as the "Montana Captive Insurers  
11 Act".  
12 NEW SECTION. Section 2. Definitions. As used in  
13 [sections 1 through 19], the following definitions apply:  
14 (1) "Affiliated company" means a company which, by  
15 virtue of common ownership, control, operation, or  
16 management, is the same corporate system as a parent  
17 company, an industrial insured, or a member organization.  
18 (2) "Association" means a legal association of  
19 individuals, corporations, partnerships, or associations  
20 that has been in continuous existence for at least 1 year  
21 and whose members collectively:  
22 (a) own, control, or hold with power to vote all of  
23 the outstanding voting securities of an association captive  
24 insurer that is incorporated as a stock insurer; or  
25 (b) have complete voting control over an association

1 captive insurer that is incorporated as a mutual insurer.  
2 (3) "Association captive insurer" means a company that  
3 insures risks of the member organizations of the association  
4 and their affiliated companies.  
5 (4) "Captive insurer" means a pure captive insurer,  
6 association captive insurer, or industrial insured captive  
7 insurer formed or authorized under [sections 1 through 19].  
8 (5) "Excess workers' compensation insurance" means, in  
9 the case of an employer that has insured or self-insured its  
10 workers' compensation risks in accordance with applicable  
11 state law, insurance in excess of a specified per-incident  
12 or aggregate limit.  
13 (6) "Industrial insured" means an insured:  
14 (a) who procures the insurance of a risk by using the  
15 services of a full-time employee acting as an insurance  
16 manager or buyer;  
17 (b) whose aggregate annual premiums for insurance on  
18 all risks total at least \$25,000; and  
19 (c) who has at least 25 full-time employees.  
20 (7) "Industrial insured captive insurer" means a  
21 company that insures risks of the industrial insureds that  
22 comprise the industrial insured group and the group's  
23 affiliated companies.  
24 (8) "Industrial insured group" means either:  
25 (a) a group of industrial insureds that collectively:

1 (i) own, control, or hold with power to vote all of  
2 the outstanding voting securities of an industrial insured  
3 captive insurer that is incorporated as a stock insurer; or

4 (ii) have complete voting control over an industrial  
5 insured captive insurer that is incorporated as a mutual  
6 insurer; or

7 (b) a group that is created under the Product  
8 Liability Risk Retention Act of 1981 (15 U.S.C. 3901), as  
9 amended, as a corporation or other limited liability  
10 association taxable as a stock insurer or a mutual insurer  
11 under Montana law.

12 (9) "Member organization" means an individual,  
13 corporation, partnership, or association that belongs to an  
14 association.

15 (10) "Parent" means a corporation, partnership, or  
16 individual that directly or indirectly owns, controls, or  
17 holds with power to vote more than 50% of the outstanding  
18 voting securities of a pure captive insurer.

19 (11) "Pure captive insurer" means a company that  
20 insures risks of its parent and affiliated companies.

21 **NEW SECTION. Section 3. Certificate of authority --**  
22 **procedure.** (1) A captive insurer, when permitted by its  
23 articles of incorporation or charter, may apply to the  
24 commissioner for a certificate of authority to transact the  
25 kinds of insurance defined in 33-1-206(1)(a),

1 33-1-206(1)(b), 33-1-206(1)(d) through 33-1-206(1)(n),  
2 33-1-209, 33-1-210, and 33-1-211 except that:

3 (a) a pure captive insurer may not insure a risk other  
4 than that of its parent and affiliated companies;

5 (b) an association captive insurer may not insure a  
6 risk other than that of the member organizations of its  
7 association and their affiliated companies;

8 (c) an industrial insured captive insurer may not  
9 insure a risk other than that of the industrial insureds  
10 that comprise the industrial insured group and the group's  
11 affiliated companies;

12 (d) a captive insurer may not provide personal motor  
13 vehicle or homeowner's insurance coverage or any component  
14 thereof;

15 (e) a captive insurer may not accept or cede  
16 reinsurance except as provided in [section 12]; and

17 (f) a captive insurer may provide excess workers'  
18 compensation insurance to its parent and affiliated  
19 companies unless prohibited by the laws of the state having  
20 jurisdiction over the transaction.

21 (2) A captive insurer may not transact any insurance  
22 business in this state unless:

23 (a) it first obtains from the commissioner a  
24 certificate of authority authorizing it to transact  
25 insurance business in this state;

1 (b) its board of directors holds at least one meeting  
2 each year in this state;

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

5 (d) it appoints a resident registered agent to accept  
6 service of process and to otherwise act on its behalf in  
7 this state. If the registered agent cannot with reasonable  
8 diligence be found at the registered office of the captive  
9 insurer, the secretary of state is the agent of the captive  
10 insurer upon whom any process, notice, or demand may be  
11 served.

12 (3) Before receiving a certificate of authority, each  
13 applicant captive insurer shall file with the commissioner:

14 (a) a certified copy of its charter and bylaws, a  
15 statement under oath of its president and secretary showing  
16 its financial condition, and any other statements or  
17 documents required by the commissioner; and

18 (b) evidence of the following:

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

21 (ii) the adequacy of the expertise, experience, and  
22 character of each person who will manage it;

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

24 (iv) the adequacy of the loss prevention programs of  
25 its parent, member organizations, or industrial insureds, as

1 applicable; and

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

5 (4) Each captive insurer shall pay to the commissioner  
6 a nonrefundable fee as provided in 33-2-708 for the  
7 examination and investigation and the processing of its  
8 application for a certificate of authority. In addition, it  
9 shall pay a fee as provided in 33-2-708 for annual  
10 continuation of a certificate of authority. The commissioner  
11 may retain legal, financial, and examination services from  
12 outside the department, the reasonable cost of which may be  
13 charged to the applicant.

14 (5) If the commissioner is satisfied that the  
15 documents and statements filed by the captive insurer comply  
16 with [sections 1 through 19], he may grant a certificate of  
17 authority authorizing it to transact insurance business in  
18 this state. A certificate of authority issued under  
19 [sections 1 through 19] continues in force until suspended,  
20 revoked, or otherwise terminated. The certificate of  
21 authority must be continued by the captive insurer each year  
22 by payment before March 1 of the renewal fee required in  
23 33-2-708.

24 NEW SECTION. **Section 4. Name of captive insurer.** A  
25 captive insurer may not adopt a name that is the same as,

1 deceptively similar to, or likely to be confused with or  
2 mistaken for any other existing business name registered in  
3 the state of Montana.

4 NEW SECTION. Section 5. Minimum capital -- letter of  
5 credit. (1) The commissioner may not issue a certificate of  
6 authority to a pure captive insurer, an association captive  
7 insurer that is incorporated as a stock insurer, or an  
8 industrial insured captive insurer that is incorporated as a  
9 stock insurer unless it possesses and maintains unimpaired  
10 paid-in capital of:

11 (a) in the case of a pure captive insurer, not less  
12 than \$100,000;

13 (b) in the case of an association captive insurer that  
14 is incorporated as a stock insurer, not less than \$400,000;  
15 or

16 (c) in the case of an industrial insured captive  
17 insurer that is incorporated as a stock insurer, not less  
18 than \$200,000.

19 (2) The capital required in subsection (1) may be in  
20 the form of cash or an irrevocable letter of credit issued  
21 by a bank chartered by the state of Montana or a member bank  
22 of the federal reserve system approved by the commissioner.

23 NEW SECTION. Section 6. Minimum surplus -- letter of  
24 credit. (1) The commissioner may not issue a certificate of  
25 authority to a captive insurer unless it possesses and

1 maintains free surplus of:

2 (a) in the case of a pure captive insurer, not less  
3 than \$150,000;

4 (b) in the case of an association captive insurer that  
5 is incorporated as a stock insurer, not less than \$350,000;

6 (c) in the case of an industrial insured captive  
7 insurer that is incorporated as a stock insurer, not less  
8 than \$300,000;

9 (d) in the case of an association captive insurer that  
10 is incorporated as a mutual insurer, not less than \$750,000;  
11 or

12 (e) in the case of an industrial insured captive  
13 insurer that is incorporated as a mutual insurer, not less  
14 than \$500,000.

15 (2) The surplus required in subsection (1) may be in  
16 the form of cash or an irrevocable letter of credit issued  
17 by a bank chartered by the state of Montana or a member bank  
18 of the federal reserve system approved by the commissioner.

19 NEW SECTION. Section 7. Formation of a captive  
20 insurer in this state. (1) A pure captive insurer must be  
21 incorporated in this state as a stock insurer as defined in  
22 33-3-102.

23 (2) An association captive insurer or an industrial  
24 insured captive insurer may be incorporated in this state:

25 (a) as a stock insurer as defined in 33-3-102; or

(b) as a mutual insurer as defined in 33-3-102.

(3) A captive insurer may not have less than three incorporators, of whom not less than two must be residents of this state.

(4) Before the articles of incorporation are transmitted to the secretary of state, the incorporators shall petition the commissioner to issue a certificate setting forth his finding that the establishment and maintenance of the proposed corporation will promote the general good of the state. To determine whether the corporation will promote the general good of the state, the commissioner shall consider:

(a) the character, reputation, financial standing, and purposes of the incorporators;

(b) the character, reputation, financial responsibility, insurance experience, and business qualifications of the officers and directors; and

(c) other aspects the commissioner considers advisable.

(5) The incorporators shall transmit to the secretary of state the articles of incorporation and the certificate described in subsection (4). The secretary of state shall record the articles of incorporation and the certificate.

(6) The capital stock of a captive insurer incorporated as a stock insurer must be issued at not less

than par value.

(7) At least one of the members of the board of directors of a captive insurer incorporated in this state must be a resident of this state.

(8) A captive insurer formed under [sections 1 through 19] has the privileges of and is subject to Title 35 and the applicable provisions of [sections 1 through 19]. If a provision of Title 35 conflicts with a provision of [sections 1 through 19], [sections 1 through 19] control.

**NEW SECTION. Section 8. Annual statement.** Prior to March 1 of each year, each captive insurer transacting insurance business in this state shall submit to the commissioner a statement of its financial condition, verified by oath of two of its executive officers. Each association captive insurer shall file its statement in the form required by 33-2-701. The commissioner shall by rule propose the form in which a pure captive insurer and an industrial insured captive insurer submit a statement of financial condition.

**NEW SECTION. Section 9. Examinations -- costs.** (1) Except as provided in subsection (2), the commissioner shall, not less than once every 3 years and whenever he considers it advisable, visit each authorized captive insurer and thoroughly inspect and examine its affairs, transactions, accounts, records, and assets to ascertain its

1 financial condition, its ability to fulfill its obligations,  
2 and its compliance with [sections 1 through 19].

3 (2) If the captive insurer is subject to a  
4 comprehensive annual audit by independent auditors approved  
5 by the commissioner, the commissioner may, in his discretion  
6 and upon application by a captive insurer, increase the  
7 3-year period described in subsection (1) to 5 years.

8 (3) The examined captive insurer shall pay the costs  
9 of the examination. The commissioner shall pay to the  
10 credit of the general fund all money received by him for an  
11 examination or investigation conducted under this section.

12 NEW SECTION. Section 10. Grounds and procedures for  
13 suspension or revocation of certificate of authority. (1)  
14 The commissioner may suspend or revoke the certificate of  
15 authority of a captive insurer to transact insurance in this  
16 state for any of the following reasons:

- 17 (a) insolvency or impairment of capital or surplus;  
18 (b) failure to meet the requirements of [section 5 or  
19 6];  
20 (c) refusal or failure to submit an annual statement,  
21 as required by [section 8], or any other report required by  
22 law or by order of the commissioner;  
23 (d) failure to comply with the provisions of [sections  
24 1 through 19] or its own articles of incorporation, charter,  
25 or bylaws;

1 (e) failure to submit to examination, as required by  
2 [section 9], or any related legal obligation;

3 (f) refusal or failure to pay the costs of examination  
4 as required by [section 9];

5 (g) use of methods that, although not otherwise  
6 specifically prohibited by law, nevertheless render its  
7 operation detrimental to or its condition unsound with  
8 respect to the public or its policyholders; or

9 (h) failure to comply with any other laws of this  
10 state.

11 (2) If, upon examination, hearing, or other evidence,  
12 the commissioner finds that a captive insurer has committed  
13 any of the acts specified in subsection (1), he may,  
14 notwithstanding any other provision of [this code], suspend  
15 or revoke the certificate of authority if he finds it in the  
16 best interest of the public and the policyholders of the  
17 captive insurer.

18 NEW SECTION. Section 11. Legal investments. (1) An  
19 association captive insurer shall comply with the investment  
20 requirements contained in Title 33, chapter 2, part 8.

21 (2) A pure captive insurer or industrial insured  
22 captive insurer is not subject to any restrictions on  
23 allowable investments, including those limitations contained  
24 in Title 33, chapter 2, part 8, except that the commissioner  
25 may prohibit or limit any investment that threatens the

1 solvency or liquidity of such an insurer.

2 NEW SECTION. Section 12. Reinsurance. (1) A captive  
3 insurer may provide reinsurance on risks ceded by any other  
4 insurer.

5 (2) A captive insurer may take credit for reserves on  
6 risks or portions of risks ceded to reinsurers that have  
7 complied with 33-2-1205. A captive insurer must receive the  
8 prior approval of the commissioner before it may cede risks  
9 to or take credit for reserves on risks or portions of risks  
10 ceded to reinsurers that have not complied with 33-2-1205.

11 (3) In addition to credit for reinsurance allowed  
12 under 33-2-1205, a captive insurer may take credit for  
13 reserves on risks or portions of risks ceded to a pool,  
14 exchange, or association acting as a reinsurer that has been  
15 authorized by the commissioner. The commissioner may require  
16 any documents, financial information, or other evidence that  
17 the pool, exchange, or association will be able to provide  
18 adequate security for its financial obligations. The  
19 commissioner may deny authorization or impose any  
20 limitations on the activities of a reinsurance pool,  
21 exchange, or association that, in his judgment, are  
22 necessary and proper to provide adequate security for the  
23 ceding captive insurer and for the protection and benefit of  
24 the public.

25 NEW SECTION. Section 13. Rating organizations --

1 membership. A captive insurer may not be required to join a  
2 rating organization.

3 NEW SECTION. Section 14. Exemption from compulsory  
4 association. A captive insurer may not join or contribute  
5 financially to a plan, pool, association, or guaranty or  
6 insolvency fund in this state. A captive insurer, its  
7 insured, its parent or any affiliated company, or any member  
8 organization of its association may not receive a benefit  
9 from any plan, pool, association, or guaranty or insolvency  
10 fund for claims arising out of the operations of the captive  
11 insurer.

12 NEW SECTION. Section 15. Tax on premiums collected.  
13 (1) Subject to subsection (3), each authorized or formerly  
14 authorized captive insurer shall pay to the commissioner, on  
15 or before March 1 each year, a tax computed at the rate of  
16 8/10 of 1% on the first \$15 million and 6/10 of 1% on each  
17 additional dollar on the direct premiums collected or  
18 contracted for on policies or contracts of insurance  
19 covering property or risks in this state and on risks and  
20 property situated elsewhere upon which no premium tax is  
21 otherwise paid by the company during the preceding calendar  
22 year, after deducting from the direct premiums subject to  
23 the tax the amounts paid to policyholders as return premiums  
24 or premium deposits returned or credited to policyholders.

25 (2) Subject to subsection (3), each authorized and



1 formerly authorized captive insurer shall pay to the  
 2 commissioner, on or before March 1 each year, a tax computed  
 3 at the rate of 3/10 of 1% on the first \$15 million of  
 4 assumed reinsurance premium and at the rate of 2/10 of 1% of  
 5 each additional dollar. However, no reinsurance tax applies  
 6 to premiums for risks or portions of risks that are subject  
 7 to taxation on a direct basis pursuant to subsection (1). A  
 8 reinsurance premium tax is not payable on the receipt of  
 9 assets in exchange for the assumption of loss reserves and  
 10 other liabilities of another insurer under common ownership  
 11 and control if:

12 (a) the transaction is part of a plan to discontinue  
 13 the operations of the other insurer; and

14 (b) the intent of the parties to the transaction is to  
 15 renew or maintain the business with the captive insurer.

16 (3) If the aggregate taxes that a captive insurer is  
 17 required to pay under subsections (1) and (2) is less than  
 18 \$5,000 a year, the captive insurer shall pay a tax of \$5,000  
 19 for that year.

20 (4) Two or more captive insurers under common  
 21 ownership and control must be taxed as though they were a  
 22 single captive insurer.

23 (5) For the purposes of subsection (4), "common  
 24 ownership and control" means:

25 (a) in the case of a stock corporation, the direct or

1 indirect ownership of 80% or more of the outstanding voting  
 2 stock of two or more corporations by the same shareholder or  
 3 shareholders; and

4 (b) in the case of a mutual corporation, the direct or  
 5 indirect ownership of 80% or more of the surplus and the  
 6 voting power of two or more corporations by the same member  
 7 or members.

8 (6) The taxes provided for in this section constitute  
 9 all taxes collectible under the laws of this state from a  
 10 captive insurer, and no occupation tax or other taxes may be  
 11 levied or collected from a captive insurer by the state or  
 12 by a county, city, or municipality within this state, except  
 13 ad valorem taxes on real and personal property used in the  
 14 production of income.

15 (7) (a) Except as provided in subsection (7)(b), the  
 16 commissioner shall promptly deposit the amounts received  
 17 pursuant to this section to the credit of the general fund  
 18 of this state.

19 (b) The commissioner shall annually deposit 7.5% of  
 20 the premium tax revenues collected pursuant to this section  
 21 in the captive insurer regulatory and supervision trust  
 22 account pursuant to [section 18]. The money deposited under  
 23 this subsection is statutorily appropriated, as provided in  
 24 17-7-502, to the commissioner for purposes of regulating  
 25 captive insurers under [sections 1 through 19].

1        **NEW SECTION. Section 16.** Rules. The commissioner may  
 2 adopt rules relating to captive insurers as are necessary to  
 3 enable him to carry out the provisions of [sections 1  
 4 through 19].

5        **NEW SECTION. Section 17.** Other provisions applicable.  
 6 (1) Except as provided in subsection (2), no provisions of  
 7 [this code] apply to a captive insurer.

8        (2) The following chapters and sections of [this code]  
 9 apply to captive insurers to the extent applicable and not  
 10 in conflict with [sections 1 through 19]: chapter 1; chapter  
 11 2, part 8; 33-2-701; 33-2-708; 33-2-1205; and [sections 1  
 12 through 19].

13        **NEW SECTION. Section 18.** Captive insurer regulatory  
 14 and supervision trust account. (1) There is created in the  
 15 state treasury an account within the state special revenue  
 16 fund designated the "captive insurer regulatory and  
 17 supervision trust account" for the purpose of providing the  
 18 financial means for the commissioner of insurance to  
 19 administer [sections 1 through 19]. Amounts collected  
 20 pursuant to [section 15(7)(b)] must be credited to this  
 21 fund.

22        (2) All payments from the captive insurer regulatory  
 23 and supervision trust account for the maintenance of staff  
 24 and associated expenses, including contractual services as  
 25 necessary, must be disbursed from the state treasury only

1 upon warrants issued by the commissioner after receipt of  
 2 proper documentation regarding services rendered and  
 3 expenses incurred.

4        (3) At the end of each fiscal year, that portion of  
 5 the balance in the captive insurer regulatory and  
 6 supervision trust account that exceeds \$100,000 must be  
 7 transferred to the general fund.

8        (4) The commissioner may anticipate receipts to the  
 9 captive insurer regulatory and supervision trust account and  
 10 issue warrants based on anticipated receipts.

11        **NEW SECTION. Section 19.** Penalties. A captive insurer  
 12 that violates or causes or induces a violation of [sections  
 13 1 through 18] or a rule implementing a provision of  
 14 [sections 1 through 18] is subject to a penalty as provided  
 15 in 33-1-317.

16        **Section 20.** Section 33-2-708, MCA, is amended to read:

17        **"33-2-708. Fees and licenses.** (1) The commissioner  
 18 shall collect in advance and the persons so served shall so  
 19 pay to the commissioner the following fees and licenses:

20        (a) certificates of authority:

21        (i) for filing applications for original certificates  
 22 of authority, articles of incorporation (except original  
 23 articles of incorporation of domestic insurers as provided  
 24 in subsection (b) below) and other charter documents,  
 25 bylaws, financial statement, examination report, power of

1 attorney to the commissioner, and all other documents and  
 2 filings required in connection with such application and for  
 3 issuance of an original certificate of authority, if issued:  
 4 (A) domestic insurers ..... \$ 300.00  
 5 (B) foreign insurers ..... 300.00  
 6 (C) captive insurers.....300.00  
 7 (ii) annual continuation of certificate of authority ..  
 8 ..... 300.00  
 9 (iii) reinstatement of certificate of authority .....  
 10 ..... 25.00  
 11 (iv) amendment of certificate of authority .... 50.00  
 12 (b) articles of incorporation:  
 13 (i) filing original articles of incorporation of  
 14 domestic insurer, exclusive of fees required to be paid by  
 15 the corporation to the secretary of state ..... 20.00  
 16 (ii) filing amendment of articles of incorporation,  
 17 domestic and foreign insurers, exclusive of fees required to  
 18 be paid to the secretary of state by a domestic corporation  
 19 ..... 25.00  
 20 (c) filing bylaws or amendment thereto where required  
 21 ..... 10.00  
 22 (d) filing annual statement of insurer, other than as  
 23 part of application for original certificate of authority ..  
 24 ..... 25.00  
 25 (e) resident agent's license:

1 (i) application for original license, including  
 2 issuance of license, if issued (life and/or disability) ....  
 3 ..... 15.00  
 4 (ii) application for original license, including  
 5 issuance of license, if issued (other than life and/or  
 6 disability) ..... 15.00  
 7 (iii) appointment of agent, each insurer ..... 10.00  
 8 (iv) annual renewal, each insurer ..... 10.00  
 9 (v) temporary license ..... 10.00  
 10 (vi) amendment of license (excluding additions thereto)  
 11 or reissuance of master license ..... 10.00  
 12 (f) nonresident agent's license:  
 13 (i) application for original license, including  
 14 issuance of license, if issued (life and/or disability) ....  
 15 ..... 100.00  
 16 (ii) application for original license, including  
 17 issuance of license, if issued (other than life and/or  
 18 disability) ..... 100.00  
 19 (iii) appointment of agent, each insurer ..... 10.00  
 20 (iv) annual renewal, each insurer ..... 10.00  
 21 (v) amendment of license (excluding additions thereto)  
 22 or reissuance of master license ..... 10.00  
 23 (g) solicitor's license:  
 24 (i) application for original license, including  
 25 issuance of license, if issued ..... 15.00

1 (ii) annual renewal of license ..... 15.00  
 2 (iii) appointment of solicitor ..... 10.00  
 3 (h) examination for license as agent or solicitor,  
 4 each examination ..... 15.00  
 5 (i) surplus lines agent license:  
 6 (i) application for original license and for issuance  
 7 of license, if issued ..... 50.00  
 8 (ii) annual renewal of license ..... 50.00  
 9 (j) adjuster's license:  
 10 (i) application for original license and for issuance  
 11 of license, if issued ..... 15.00  
 12 (ii) annual renewal of license ..... 15.00  
 13 (k) insurance vending machine license, each machine,  
 14 each year ..... 10.00  
 15 (l) commissioner's certificate under seal (except when  
 16 on certificates of authority or licenses) ..... 10.00  
 17 (m) copies of documents on file in the commissioner's  
 18 office, per page ..... .50  
 19 (n) policy forms:  
 20 (i) filing each policy form ..... 25.00  
 21 (ii) filing each application, rider, endorsement,  
 22 amendment, insert page, schedule of rates, and clarification  
 23 of risks ..... 10.00  
 24 (iii) maximum charge if policy and all forms submitted  
 25 at one time or resubmitted for approval within 180 days ....

1 ..... 100.00  
 2 (2) The commissioner shall promptly deposit with the  
 3 state treasurer to the credit of the general fund of this  
 4 state all fines and penalties, those amounts received  
 5 pursuant to 33-2-311, 33-2-705, and 33-2-706, and any fees  
 6 and examination and miscellaneous charges received pursuant  
 7 to Title 33, chapter 11, part 1, that are collected by him  
 8 pursuant to Title 33 and the rules adopted thereunder.  
 9 (3) All fees are considered fully earned when  
 10 received. In the event of overpayment, only those amounts in  
 11 excess of \$10 will be refunded.  
 12 (4) All fees and examination and miscellaneous  
 13 charges, except fines or penalties or those amounts received  
 14 pursuant to 33-2-311, 33-2-705, or 33-2-706, collected by  
 15 the commissioner pursuant to Title 33 and the rules adopted  
 16 thereunder must be deposited in the insurance regulatory  
 17 trust account pursuant to 17-2-121 through 17-2-123."  
 18 **Section 21.** Section 17-7-502, MCA, is amended to read:  
 19 "17-7-502. Statutory appropriations -- definition --  
 20 requisites for validity. (1) A statutory appropriation is an  
 21 appropriation made by permanent law that authorizes spending  
 22 by a state agency without the need for a biennial  
 23 legislative appropriation or budget amendment.  
 24 (2) Except as provided in subsection (4), to be  
 25 effective, a statutory appropriation must comply with both

1 of the following provisions:

2 (a) The law containing the statutory authority must be  
3 listed in subsection (3).

4 (b) The law or portion of the law making a statutory  
5 appropriation must specifically state that a statutory  
6 appropriation is made as provided in this section.

7 (3) The following laws are the only laws containing  
8 statutory appropriations: 2-9-202; 2-17-105; 2-18-812;  
9 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304;  
10 15-25-123; 15-31-702; 15-36-112; 15-65-121; 15-70-101;  
11 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424;  
12 17-5-804; 19-8-504; 19-9-702; 19-9-1007; 19-10-205;  
13 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606;  
14 19-12-301; 19-13-604; 20-4-109; 20-6-406; 20-8-111;  
15 23-5-610; 23-5-1027; 33-31-212; 33-31-401; 37-51-501;  
16 39-71-2504; 53-6-150; 53-24-206; 67-3-205; 75-1-1101;  
17 75-7-305; 76-12-123; 80-2-103; 80-2-228; 82-11-136;  
18 90-3-301; 90-3-302; 90-3-412; 90-4-215; 90-9-306; 90-15-103;  
19 section 13, House Bill No. 861, Laws of 1985; and section 1,  
20 Chapter 454, Laws of 1987; and [section 15].

21 (4) There is a statutory appropriation to pay the  
22 principal, interest, premiums, and costs of issuing, paying,  
23 and securing all bonds, notes, or other obligations, as due,  
24 that have been authorized and issued pursuant to the laws of  
25 Montana. Agencies that have entered into agreements

1 authorized by the laws of Montana to pay the state  
2 treasurer, for deposit in accordance with 17-2-101 through  
3 17-2-107, as determined by the state treasurer, an amount  
4 sufficient to pay the principal and interest as due on the  
5 bonds or notes have statutory appropriation authority for  
6 such payments. (In subsection (3): pursuant to sec. 15, Ch.  
7 607, L. 1987, the inclusion of 15-65-121 terminates June 30,  
8 1989; pursuant to sec. 10, Ch. 664, L. 1987, the inclusion  
9 of 39-71-2504 terminates June 30, 1991; and pursuant to sec.  
10 6, Ch. 454, L. 1987, the inclusion of sec. 1, Ch. 454, L.  
11 1987, terminates July 1, 1988.)"

12 NEW SECTION. Section 22. Extension of authority. Any  
13 existing authority to make rules on the subject of the  
14 provisions of [this act] is extended to the provisions of  
15 [this act].

16 NEW SECTION. Section 23. Codification instruction.  
17 (1) [Sections 1 through 17 and 19] are intended to be  
18 codified as an integral part of Title 33, and the provisions  
19 of Title 33 apply to [sections 1 through 17 and 19].

20 (2) [Section 18] is intended to be codified as an  
21 integral part of Title 17, chapter 2, part 1, and the  
22 provisions of Title 17, chapter 2, part 1, apply to [section  
23 18].

24 NEW SECTION. Section 24. Saving clause. [This act]  
25 does not affect rights and duties that matured, penalties

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1 that were incurred, or proceedings that were begun before  
2 [the effective date of this act].

3 NEW SECTION. **Section 25. Severability.** If a part of  
4 [this act] is invalid, all valid parts that are severable  
5 from the invalid part remain in effect. If a part of [this  
6 act] is invalid in one or more of its applications, the part  
7 remains in effect in all valid applications that are  
8 severable from the invalid applications.

-End-

## STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB248, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An Act adopting laws to regulate Montana captive insurers; and amending Sections 17-7-502 and 33-2-708, MCA.

ASSUMPTIONS:

1. The maximum amount of premiums collected by captive insurers from Montana residents is estimated to be \$10 million. This is approximately 20% of current general liability premiums.
2. The \$10 million of collected captive premiums will reduce premiums collected by other property/casualty insurers operating in the state.
3. The net decrease in premium tax revenues will be \$195,000 per fiscal year, based on the difference between the current tax rate of 2.75% and the proposed captive rate of 0.008%.
4. The State Auditor's Office will receive \$6,000 per fiscal year to regulate captive insurers as a provision of this Bill.

FISCAL IMPACT:

	Current	FY90 Proposed		Current	FY91 Proposed	
<u>Revenue:</u>	<u>Law</u>	<u>Law</u>	<u>Difference</u>	<u>Law</u>	<u>Law</u>	<u>Difference</u>
Premium Tax	\$275,000	\$80,000	(\$195,000)	\$275,000	\$80,000	(\$195,000)
<u>Expenditures:</u>						
Operating Expenses	-0-	6,000	6,000	-0-	6,000	6,000
<u>Net Effect:</u>						
Earmarked Special Revenue	\$275,000	\$74,000	(\$201,000)	\$275,000	\$74,000	(\$201,000)

Ray Shackelford 2/2/89  
 RAY SHACKLEFORD, BUDGET DIRECTOR DATE  
 OFFICE OF BUDGET AND PROGRAM PLANNING

Gene Thayer 2/3/89  
 GENE THAYER, PRIMARY SPONSOR DATE

Fiscal Note for SB248, as introduced

**SB 248**

APPROVED BY COMM. ON  
BUSINESS & INDUSTRY

## SENATE BILL NO. 248

INTRODUCED BY THAYER, MEYER, PAVLOVICH,

CAMPBELL, HOFFMAN, WHALEN

A BILL FOR AN ACT ENTITLED: "AN ACT ADOPTING LAWS TO  
REGULATE MONTANA CAPTIVE INSURERS; AND AMENDING SECTIONS  
17-7-502-AND SECTION 33-2-708, MCA."

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

NEW SECTION. Section 1. Short title. [Sections 1  
through 19] may be cited as the "Montana Captive Insurers  
Act".

NEW SECTION. Section 2. Definitions. As used in  
[sections 1 through 19], the following definitions apply:

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

(2) "Association" means a legal association of  
individuals, corporations, partnerships, or associations  
that has been in continuous existence for at least 1 year  
and whose members collectively:

(a) own, control, or hold with power to vote all of  
the outstanding voting securities of an association captive  
insurer that is incorporated as a stock insurer; or

(b) have complete voting control over an association  
captive insurer that is incorporated as a mutual insurer.

(3) "Association captive insurer" means a company that  
insures risks of the member organizations of the association  
and their affiliated companies.

(4) "Captive insurer" means a pure captive insurer,  
association captive insurer, or industrial insured captive  
insurer formed or authorized under [sections 1 through 19].

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

(6) "Industrial insured" means an insured:

(a) who procures the insurance of a risk by using the  
services of a full-time employee acting as an insurance  
manager or buyer;

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

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

(7) "Industrial insured captive insurer" means a  
company that insures risks of the industrial insureds that  
comprise the industrial insured group and the group's  
affiliated companies.

(8) "Industrial insured group" means either:



1 (a) a group of industrial insureds that collectively:  
 2 (i) own, control, or hold with power to vote all of  
 3 the outstanding voting securities of an industrial insured  
 4 captive insurer that is incorporated as a stock insurer; or  
 5 (ii) have complete voting control over an industrial  
 6 insured captive insurer that is incorporated as a mutual  
 7 insurer; or  
 8 (b) a group that is created under the Product  
 9 Liability Risk Retention Act of 1981 (15 U.S.C. 3901), as  
 10 amended, as a corporation or other limited liability  
 11 association taxable as a stock insurer or a mutual insurer  
 12 under Montana law.  
 13 (9) "Member organization" means an individual,  
 14 corporation, partnership, or association that belongs to an  
 15 association.  
 16 (10) "Parent" means a corporation, partnership, or  
 17 individual that directly or indirectly owns, controls, or  
 18 holds with power to vote more than 50% of the outstanding  
 19 voting securities of a pure captive insurer.  
 20 (11) "Pure captive insurer" means a company that  
 21 insures risks of its parent and affiliated companies.  
 22 **NEW SECTION. Section 3. Certificate of authority --**  
 23 **procedure.** (1) A captive insurer, when permitted by its  
 24 articles of incorporation or charter, may apply to the  
 25 commissioner for a certificate of authority to transact the

1 kinds of insurance defined in 33-1-206(1)(a),  
 2 33-1-206(1)(b), 33-1-206(1)(d) through 33-1-206(1)(n),  
 3 33-1-209, 33-1-210, and 33-1-211 except that:  
 4 (a) a pure captive insurer may not insure a risk other  
 5 than that of its parent and affiliated companies;  
 6 (b) an association captive insurer may not insure a  
 7 risk other than that of the member organizations of its  
 8 association and their affiliated companies;  
 9 (c) an industrial insured captive insurer may not  
 10 insure a risk other than that of the industrial insureds  
 11 that comprise the industrial insured group and the group's  
 12 affiliated companies;  
 13 (d) a captive insurer may not provide personal motor  
 14 vehicle or homeowner's insurance coverage or any component  
 15 thereof;  
 16 (e) a captive insurer may not accept or cede  
 17 reinsurance except as provided in [section 12]; and  
 18 (f) a captive insurer may provide excess workers'  
 19 compensation insurance to its parent and affiliated  
 20 companies unless prohibited by the laws of the state having  
 21 jurisdiction over the transaction.  
 22 (2) A captive insurer may not transact any insurance  
 23 business in this state unless:  
 24 (a) it first obtains from the commissioner a  
 25 certificate of authority authorizing it to transact

1 insurance business in this state;

2 (b) its board of directors holds at least one meeting  
3 each year in this state;

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

6 (d) it appoints a resident registered agent to accept  
7 service of process and to otherwise act on its behalf in  
8 this state. If the registered agent cannot with reasonable  
9 diligence be found at the registered office of the captive  
10 insurer, the secretary of state is the agent of the captive  
11 insurer upon whom any process, notice, or demand may be  
12 served.

13 (3) Before receiving a certificate of authority, each  
14 applicant captive insurer shall file with the commissioner:

15 (a) a certified copy of its charter and bylaws, a  
16 statement under oath of its president and secretary showing  
17 its financial condition, and any other statements or  
18 documents required by the commissioner; and

19 (b) evidence of the following:

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

22 (ii) the adequacy of the expertise, experience, and  
23 character of each person who will manage it;

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

25 (iv) the adequacy of the loss prevention programs of

1 its parent, member organizations, or industrial insureds, as  
2 applicable; and

3 (v) other factors considered relevant by the  
4 commissioner in ascertaining whether the proposed captive  
5 insurer will be able to meet its policy obligations.

6 (4) Each captive insurer shall pay to the commissioner  
7 a nonrefundable fee as provided in 33-2-708 for the  
8 examination and investigation and the processing of its  
9 application for a certificate of authority. In addition, it  
10 shall pay a fee as provided in 33-2-708 for annual  
11 continuation of a certificate of authority. The commissioner  
12 may retain legal, financial, and examination services from  
13 outside the department, the reasonable cost of which may be  
14 charged to the applicant.

15 (5) If the commissioner is satisfied that the  
16 documents and statements filed by the captive insurer comply  
17 with [sections 1 through 19], he may grant a certificate of  
18 authority authorizing it to transact insurance business in  
19 this state. A certificate of authority issued under  
20 [sections 1 through 19] continues in force until suspended,  
21 revoked, or otherwise terminated. The certificate of  
22 authority must be continued by the captive insurer each year  
23 by payment before March 1 of the renewal fee required in  
24 33-2-708.

25 NEW SECTION. **Section 4.** Name of captive insurer. A

1 captive insurer may not adopt a name that is the same as,  
2 deceptively similar to, or likely to be confused with or  
3 mistaken for any other existing business name registered in  
4 the state of Montana.

5 NEW SECTION. Section 5. Minimum capital -- letter of  
6 credit. {i} The commissioner may not issue a certificate of  
7 authority to a pure captive insurer, an association captive  
8 insurer that is incorporated as a stock insurer, or an  
9 industrial insured captive insurer that is incorporated as a  
10 stock insurer unless it possesses and maintains unimpaired  
11 paid-in capital of:

12 {a}{1} in the case of a pure captive insurer, not less  
13 than \$100,000;

14 {b}{2} in the case of an association captive insurer  
15 that is incorporated as a stock insurer, not less than  
16 \$400,000; or

17 {c}{3} in the case of an industrial insured captive  
18 insurer that is incorporated as a stock insurer, not less  
19 than \$200,000.

20 {2}--The--capital--required-in-subsection-{i}-may-be-in  
21 the-form-of-cash-or-an-irrevocable-letter-of--credit--issued  
22 by-a-bank-chartered-by-the-state-of-Montana-or-a-member-bank  
23 of--the-federal-reserve-system-approved-by-the-commissioner--

24 NEW SECTION. Section 6. Minimum surplus -- letter of  
25 credit. {i} The commissioner may not issue a certificate of

1 authority to a captive insurer unless it possesses and  
2 maintains free surplus of:

3 {a}{1} in the case of a pure captive insurer, not less  
4 than \$150,000;

5 {b}{2} in the case of an association captive insurer  
6 that is incorporated as a stock insurer, not less than  
7 \$350,000;

8 {c}{3} in the case of an industrial insured captive  
9 insurer that is incorporated as a stock insurer, not less  
10 than \$300,000;

11 {d}{4} in the case of an association captive insurer  
12 that is incorporated as a mutual insurer, not less than  
13 \$750,000; or

14 {e}{5} in the case of an industrial insured captive  
15 insurer that is incorporated as a mutual insurer, not less  
16 than \$500,000.

17 {2}--The--surplus--required-in-subsection-{i}-may-be-in  
18 the-form-of-cash-or-an-irrevocable-letter-of--credit--issued  
19 by-a-bank-chartered-by-the-state-of-Montana-or-a-member-bank  
20 of--the-federal-reserve-system-approved-by-the-commissioner--

21 NEW SECTION. Section 7. Formation of a captive  
22 insurer in this state. (1) A pure captive insurer must be  
23 incorporated in this state as a stock insurer as defined in  
24 33-3-102.

25 (2) An association captive insurer or an industrial

1 insured captive insurer may be incorporated in this state:

2 (a) as a stock insurer as defined in 33-3-102; or

3 (b) as a mutual insurer as defined in 33-3-102.

4 (3) A captive insurer may not have less than three  
5 incorporators, of whom not less than two must be residents  
6 of this state.

7 (4) Before the articles of incorporation are  
8 transmitted to the secretary of state, the incorporators  
9 shall petition the commissioner to issue a certificate  
10 setting forth his finding that the establishment and  
11 maintenance of the proposed corporation will promote the  
12 general good of the state. To determine whether the  
13 corporation will promote the general good of the state, the  
14 commissioner shall consider:

15 (a) the character, reputation, financial standing, and  
16 purposes of the incorporators;

17 (b) the character, reputation, financial  
18 responsibility, insurance experience, and business  
19 qualifications of the officers and directors; and

20 (c) other aspects the commissioner considers  
21 advisable.

22 (5) The incorporators shall transmit to the secretary  
23 of state the articles of incorporation and the certificate  
24 described in subsection (4). The secretary of state shall  
25 record the articles of incorporation and the certificate.

1 (6) The capital stock of a captive insurer  
2 incorporated as a stock insurer must be issued at not less  
3 than par value.

4 (7) At least one of the members of the board of  
5 directors of a captive insurer incorporated in this state  
6 must be a resident of this state.

7 (8) A captive insurer formed under [sections 1 through  
8 19] has the privileges of and is subject to Title 35 and the  
9 applicable provisions of [sections 1 through 19]. If a  
10 provision of Title 35 conflicts with a provision of  
11 [sections 1 through 19], [sections 1 through 19] control.

12 NEW SECTION. **Section 8. Annual statement.** Prior to  
13 March 1 of each year, each captive insurer transacting  
14 insurance business in this state shall submit to the  
15 commissioner a statement of its financial condition,  
16 verified by oath of two of its executive officers. Each  
17 association captive insurer shall file its statement in the  
18 form required by 33-2-701. The commissioner shall by rule  
19 propose the form in which a pure captive insurer and an  
20 industrial insured captive insurer submit a statement of  
21 financial condition.

22 NEW SECTION. **Section 9. Examinations -- costs.** (1)  
23 Except as provided in subsection (2), the commissioner  
24 shall, not less than once every 3 years and whenever he  
25 considers it advisable, visit each authorized captive

1 insurer and thoroughly inspect and examine its affairs,  
2 transactions, accounts, records, and assets to ascertain its  
3 financial condition, its ability to fulfill its obligations,  
4 and its compliance with [sections 1 through 19].

5 (2) If the captive insurer is subject to a  
6 comprehensive annual audit by independent auditors approved  
7 by the commissioner, the commissioner may, in his discretion  
8 and upon application by a captive insurer, increase the  
9 3-year period described in subsection (1) to 5 years.

10 (3) The examined captive insurer shall pay the costs  
11 of the examination. The commissioner shall pay to the  
12 credit of the general fund all money received by him for an  
13 examination or investigation conducted under this section.

14 **NEW SECTION. Section 10. Grounds and procedures for**  
15 **suspension or revocation of certificate of authority. (1)**  
16 **The commissioner may suspend or revoke the certificate of**  
17 **authority of a captive insurer to transact insurance in this**  
18 **state for any of the following reasons:**

- 19 (a) insolvency or impairment of capital or surplus;  
20 (b) failure to meet the requirements of [section 5 or  
21 6];  
22 (c) refusal or failure to submit an annual statement,  
23 as required by [section 8], or any other report required by  
24 law or by order of the commissioner;  
25 (d) failure to comply with the provisions of [sections

1 1 through 19] or its own articles of incorporation, charter,  
2 or bylaws;

3 (e) failure to submit to examination, as required by  
4 [section 9], or any related legal obligation;

5 (f) refusal or failure to pay the costs of examination  
6 as required by [section 9];

7 (g) use of methods that, although not otherwise  
8 specifically prohibited by law, nevertheless render its  
9 operation detrimental to or its condition unsound with  
10 respect to the public or its policyholders; or

11 (h) failure to comply with any other laws of this  
12 state.

13 (2) If, upon examination, hearing, or other evidence,  
14 the commissioner finds that a captive insurer has committed  
15 any of the acts specified in subsection (1), he may,  
16 notwithstanding any other provision of [this code], suspend  
17 or revoke the certificate of authority if he finds it in the  
18 best interest of the public and the policyholders of the  
19 captive insurer.

20 **NEW SECTION. Section 11. Legal investments. (1) An**  
21 **association captive insurer shall comply with the investment**  
22 **requirements contained in Title 33, chapter 2, part 8.**

23 (2) A pure captive insurer or industrial insured  
24 captive insurer is not subject to any restrictions on  
25 allowable investments, including those limitations contained

in Title 33, chapter 2, part 8, except that the commissioner may prohibit or limit any investment that threatens the solvency or liquidity of such an insurer.

**NEW SECTION. Section 12. Reinsurance.** (1) A captive insurer may provide reinsurance on risks ceded by any other insurer.

(2) A captive insurer may take credit for reserves on risks or portions of risks ceded to reinsurers that have complied with 33-2-1205. A captive insurer must receive the prior approval of the commissioner before it may cede risks to or take credit for reserves on risks or portions of risks ceded to reinsurers that have not complied with 33-2-1205.

(3) In addition to credit for reinsurance allowed under 33-2-1205, a captive insurer may take credit for reserves on risks or portions of risks ceded to a pool, exchange, or association acting as a reinsurer that has been authorized by the commissioner. The commissioner may require any documents, financial information, or other evidence that the pool, exchange, or association will be able to provide adequate security for its financial obligations. The commissioner may deny authorization or impose any limitations on the activities of a reinsurance pool, exchange, or association that, in his judgment, are necessary and proper to provide adequate security for the ceding captive insurer and for the protection and benefit of

the public.

**NEW SECTION. Section 13. Rating organizations -- membership.** A captive insurer may not be required to join a rating organization.

**NEW SECTION. Section 14. Exemption from compulsory association.** A captive insurer may not join or contribute financially to a plan, pool, association, or guaranty or insolvency fund in this state. A captive insurer, its insured, its parent or any affiliated company, or any member organization of its association may not receive a benefit from any plan, pool, association, or guaranty or insolvency fund for claims arising out of the operations of the captive insurer.

**NEW SECTION. Section 15. Tax on premiums collected.** (1) Subject to subsection (3), each authorized or formerly authorized captive insurer shall pay to the commissioner, on or before March 1 each year, a tax computed at the rate of 8/10 of 1% on the first \$15 million and 6/10 of 1% on each additional dollar on the direct premiums collected or contracted for on policies or contracts of insurance covering property or risks in this state and on risks and property situated elsewhere upon which no premium tax is otherwise paid by the company during the preceding calendar year, after deducting from the direct premiums subject to the tax the amounts paid to policyholders as return premiums

1 or premium deposits returned or credited to policyholders.

2 (2) Subject to subsection (3), each authorized and  
3 formerly authorized captive insurer shall pay to the  
4 commissioner, on or before March 1 each year, a tax computed  
5 at the rate of 3/10 of 1% on the first \$15 million of  
6 assumed reinsurance premium and at the rate of 2/10 of 1% of  
7 each additional dollar. However, no reinsurance tax applies  
8 to premiums for risks or portions of risks that are subject  
9 to taxation on a direct basis pursuant to subsection (1). A  
10 reinsurance premium tax is not payable on the receipt of  
11 assets in exchange for the assumption of loss reserves and  
12 other liabilities of another insurer under common ownership  
13 and control if:

14 (a) the transaction is part of a plan to discontinue  
15 the operations of the other insurer; and

16 (b) the intent of the parties to the transaction is to  
17 renew or maintain the business with the captive insurer.

18 (3) If the aggregate taxes that a captive insurer is  
19 required to pay under subsections (1) and (2) is less than  
20 \$5,000 a year, the captive insurer shall pay a tax of \$5,000  
21 for that year.

22 (4) Two or more captive insurers under common  
23 ownership and control must be taxed as though they were a  
24 single captive insurer.

25 (5) For the purposes of subsection (4), "common

1 ownership and control" means:

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

6 (b) in the case of a mutual corporation, the direct or  
7 indirect ownership of 80% or more of the surplus and the  
8 voting power of two or more corporations by the same member  
9 or members.

10 (6) The taxes provided for in this section constitute  
11 all taxes collectible under the laws of this state from a  
12 captive insurer, and no occupation tax or other taxes may be  
13 levied or collected from a captive insurer by the state or  
14 by a county, city, or municipality within this state, except  
15 ad valorem taxes on real and personal property used in the  
16 production of income.

17 (7) ~~{a}-Except--as--provided-in-subsection-(7)-(b)-,the~~  
18 THE commissioner shall promptly deposit the amounts received  
19 pursuant to this section to the credit of the general fund  
20 of this state.

21 ~~{b}-The--commissioner--shall--annually-deposit-7.5%-of~~  
22 ~~the-premium-tax-revenues-collected-pursuant-to-this--section~~  
23 ~~in--the--captive--insurer--regulatory--and-supervision-trust~~  
24 ~~account-pursuant-to-{section-18}-The-money-deposited--under~~  
25 ~~this--subsection-is-statutorily-appropriated,-as-provided-in~~

~~17-7-502, to the commissioner for purposes of regulating captive insurers under {sections 1 through 19}.~~

**NEW SECTION. Section 16.** Rules. The commissioner may adopt rules relating to captive insurers as are necessary to enable him to carry out the provisions of [sections 1 through 19].

**NEW SECTION. Section 17.** Other provisions applicable. (1) Except as provided in subsection (2), no provisions of [this code] apply to a captive insurer.

(2) The following chapters and sections of [this code] apply to captive insurers to the extent applicable and not in conflict with [sections 1 through 19]: chapter 1; chapter 2, part 8; 33-2-701; 33-2-708; 33-2-1205; CHAPTER 11; and [sections 1 through 19].

~~**NEW SECTION. Section 18.** Captive insurer regulatory and supervision trust account. (1) There is created in the state treasury an account within the state special revenue fund designated the "captive insurer regulatory and supervision trust account" for the purpose of providing the financial means for the commissioner of insurance to administer {sections 1 through 19}. Amounts collected pursuant to {section 15(7)(b)} must be credited to this fund.~~

~~(2) All payments from the captive insurer regulatory and supervision trust account for the maintenance of staff~~

~~and associated expenses, including contractual services as necessary, must be disbursed from the state treasury only upon warrants issued by the commissioner after receipt of proper documentation regarding services rendered and expenses incurred.~~

~~(3) At the end of each fiscal year, that portion of the balance in the captive insurer regulatory and supervision trust account that exceeds \$100,000 must be transferred to the general fund.~~

~~(4) The commissioner may anticipate receipts to the captive insurer regulatory and supervision trust account and issue warrants based on anticipated receipts.~~

**NEW SECTION. Section 18.** Penalties. A captive insurer that violates or causes or induces a violation of [sections 1 through ~~18~~ 17] or a rule implementing a provision of [sections 1 through ~~18~~ 17] is subject to a penalty as provided in 33-1-317.

**Section 19.** Section 33-2-708, MCA, is amended to read:

**"33-2-708. Fees and licenses.** (1) The commissioner shall collect in advance and the persons so served shall so pay to the commissioner the following fees and licenses:

(a) certificates of authority;

(i) for filing applications for original certificates of authority, articles of incorporation (except original articles of incorporation of domestic insurers as provided



1 in subsection (b) below) and other charter documents,  
 2 bylaws, financial statement, examination report, power of  
 3 attorney to the commissioner, and all other documents and  
 4 filings required in connection with such application and for  
 5 issuance of an original certificate of authority, if issued:  
 6 (A) domestic insurers ..... \$ 300.00  
 7 (B) foreign insurers ..... 300.00  
 8 (C) captive insurers.....300.00  
 9 (ii) annual continuation of certificate of authority ..  
 10 ..... 300.00  
 11 (iii) reinstatement of certificate of authority .....  
 12 ..... 25.00  
 13 (iv) amendment of certificate of authority .... 50.00  
 14 (b) articles of incorporation:  
 15 (i) filing original articles of incorporation of  
 16 domestic insurer, exclusive of fees required to be paid by  
 17 the corporation to the secretary of state ..... 20.00  
 18 (ii) filing amendment of articles of incorporation,  
 19 domestic and foreign insurers, exclusive of fees required to  
 20 be paid to the secretary of state by a domestic corporation  
 21 ..... 25.00  
 22 (c) filing bylaws or amendment thereto where required  
 23 ..... 10.00  
 24 (d) filing annual statement of insurer, other than as  
 25 part of application for original certificate of authority ..

1 ..... 25.00  
 2 (e) resident agent's license:  
 3 (i) application for original license, including  
 4 issuance of license, if issued (life and/or disability) ....  
 5 ..... 15.00  
 6 (ii) application for original license, including  
 7 issuance of license, if issued (other than life and/or  
 8 disability) ..... 15.00  
 9 (iii) appointment of agent, each insurer ..... 10.00  
 10 (iv) annual renewal, each insurer ..... 10.00  
 11 (v) temporary license ..... 10.00  
 12 (vi) amendment of license (excluding additions thereto)  
 13 or reissuance of master license ..... 10.00  
 14 (f) nonresident agent's license:  
 15 (i) application for original license, including  
 16 issuance of license, if issued (life and/or disability) ....  
 17 ..... 100.00  
 18 (ii) application for original license, including  
 19 issuance of license, if issued (other than life and/or  
 20 disability) ..... 100.00  
 21 (iii) appointment of agent, each insurer ..... 10.00  
 22 (iv) annual renewal, each insurer ..... 10.00  
 23 (v) amendment of license (excluding additions thereto)  
 24 or reissuance of master license ..... 10.00  
 25 (g) solicitor's license:

1 (i) application for original license, including  
 2 issuance of license, if issued ..... 15.00  
 3 (ii) annual renewal of license ..... 15.00  
 4 (iii) appointment of solicitor ..... 10.00  
 5 (h) examination for license as agent or solicitor,  
 6 each examination ..... 15.00  
 7 (i) surplus lines agent license:  
 8 (i) application for original license and for issuance  
 9 of license, if issued ..... 50.00  
 10 (ii) annual renewal of license ..... 50.00  
 11 (j) adjuster's license:  
 12 (i) application for original license and for issuance  
 13 of license, if issued ..... 15.00  
 14 (ii) annual renewal of license ..... 15.00  
 15 (k) insurance vending machine license, each machine,  
 16 each year ..... 10.00  
 17 (l) commissioner's certificate under seal (except when  
 18 on certificates of authority or licenses) ..... 10.00  
 19 (m) copies of documents on file in the commissioner's  
 20 office, per page ..... .50  
 21 (n) policy forms:  
 22 (i) filing each policy form ..... 25.00  
 23 (ii) filing each application, rider, endorsement,  
 24 amendment, insert page, schedule of rates, and clarification  
 25 of risks ..... 10.00

1 (iii) maximum charge if policy and all forms submitted  
 2 at one time or resubmitted for approval within 180 days ....  
 3 ..... 100.00  
 4 (2) The commissioner shall promptly deposit with the  
 5 state treasurer to the credit of the general fund of this  
 6 state all fines and penalties, those amounts received  
 7 pursuant to 33-2-311, 33-2-705, and 33-2-706, and any fees  
 8 and examination and miscellaneous charges received pursuant  
 9 to Title 33, chapter 11, part 1, that are collected by him  
 10 pursuant to Title 33 and the rules adopted thereunder.  
 11 (3) All fees are considered fully earned when  
 12 received. In the event of overpayment, only those amounts in  
 13 excess of \$10 will be refunded.  
 14 (4) All fees and examination and miscellaneous  
 15 charges, except fines or penalties or those amounts received  
 16 pursuant to 33-2-311, 33-2-705, or 33-2-706, collected by  
 17 the commissioner pursuant to Title 33 and the rules adopted  
 18 thereunder must be deposited in the insurance regulatory  
 19 trust account pursuant to 17-2-121 through 17-2-123."  
 20 **Section 21.** ~~Section 17-7-502, MCA, is amended to read:~~  
 21 ~~"17-7-502. Statutory appropriations--definition--~~  
 22 ~~requisites--for--validity--(1) A statutory appropriation is~~  
 23 ~~an appropriation--made--by--permanent--law--that--authorizes~~  
 24 ~~spending--by--a--state--agency--without--the--need--for--a--biennial~~  
 25 ~~legislative--appropriation--or--budget--amendment.~~

{2}--Except--as--provided--in--subsection--{4},--to--be effective,--a--statutory appropriation must comply with both of the following provisions:

{a}--The law containing the statutory authority must be listed in subsection {3}.

{b}--The law or portion of the law making a statutory appropriation--must--specifically--state--that--a--statutory appropriation is made as provided in this section:

{3}--The following laws are the only laws containing statutory--appropriations:--2-9-202;--2-17-105;--2-18-812; 10-3-203;--10-3-312;--10-3-314;--10-4-301;--13-37-304; 15-25-123;--15-31-702;--15-36-112;--15-65-121;--15-70-101; 16-1-404;--16-1-410;--16-1-411;--17-3-212;--17-5-404;--17-5-424; 17-5-804;--19-8-504;--19-9-702;--19-9-1007;--19-10-205; 19-10-305;--19-10-506;--19-11-512;--19-11-513;--19-11-606; 19-12-301;--19-13-604;--20-4-109;--20-6-406;--20-8-111; 23-5-610;--23-5-1027;--33-31-212;--33-31-401;--37-51-501; 39-71-2504;--53-6-150;--53-24-206;--67-3-205;--75-1-1101; 75-7-305;--76-12-123;--80-2-103;--80-2-220;--82-11-136; 90-3-301;--90-3-302;--90-3-412;--90-4-215;--90-9-306;--90-15-103; section 13, House Bill No. 861, Laws of 1985; and section 1, Chapter 454, Laws of 1987, and {section 15};

{4}--There--is--a--statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due,

that have been authorized and issued pursuant to the laws of Montana;--Agencies--that--have--entered--into--agreements authorized--by--the--laws--of--Montana--to--pay--the--state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for such payments;--(in subsection {3}, pursuant to sec. 15, Ch. 607, B. 1987, the inclusion of 15-65-121 terminates June 30, 1989; pursuant to sec. 10, Ch. 664, B. 1987, the inclusion of 39-71-2504 terminates June 30, 1991; and pursuant to sec. 6, Ch. 454, B. 1987, the inclusion of sec. 1, Ch. 454, B. 1987 terminates July 1, 1988.)"

NEW SECTION. Section 20. Extension of authority. Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

NEW SECTION. Section 21. Codification instruction. {1} [Sections 1 through 17 and 19 18] are intended to be codified as an integral part of Title 33, and the provisions of Title 33 apply to [sections 1 through 17 and 19 18].

{2}--{Section--10}--is--intended--to--be--codified--as--an integral part of Title 17, chapter 2, part 1, and the provisions of Title 17, chapter 2, part 1, apply to {section 10};

1        NEW SECTION.   **Section 22.**   Saving clause.   [This act]  
2   does not affect rights and duties that matured, penalties  
3   that were incurred, or proceedings that were begun before  
4   [the effective date of this act].

5        NEW SECTION.   **Section 23.**   Severability.   If a part of  
6   [this act] is invalid, all valid parts that are severable  
7   from the invalid part remain in effect.   If a part of [this  
8   act] is invalid in one or more of its applications, the part  
9   remains in effect in all valid applications that are  
10   severable from the invalid applications.

-End-

## 1 SENATE BILL NO. 248

2 INTRODUCED BY THAYER, MEYER, PAVLOVICH,

3 CAMPBELL, HOFFMAN, WHALEN

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT ADOPTING LAWS TO  
6 REGULATE MONTANA CAPTIVE INSURERS; AND AMENDING SECTIONS  
7 17-7-502-AND SECTION 33-2-708, MCA."

8  
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 NEW SECTION. Section 1. Short title. [Sections 1  
11 through 19] may be cited as the "Montana Captive Insurers  
12 Act".

13 NEW SECTION. Section 2. Definitions. As used in  
14 [sections 1 through 19], the following definitions apply:

15 (1) "Affiliated company" means a company which, by  
16 virtue of common ownership, control, operation, or  
17 management, is the same corporate system as a parent  
18 company, an industrial insured, or a member organization.

19 (2) "Association" means a legal association of  
20 individuals, corporations, partnerships, or associations  
21 that has been in continuous existence for at least 1 year  
22 and whose members collectively:

23 (a) own, control, or hold with power to vote all of  
24 the outstanding voting securities of an association captive  
25 insurer that is incorporated as a stock insurer; or

1 (b) have complete voting control over an association  
2 captive insurer that is incorporated as a mutual insurer.

3 (3) "Association captive insurer" means a company that  
4 insures risks of the member organizations of the association  
5 and their affiliated companies.

6 (4) "Captive insurer" means a pure captive insurer,  
7 association captive insurer, or industrial insured captive  
8 insurer formed or authorized under [sections 1 through 19].

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

14 (6) "Industrial insured" means an insured:

15 (a) who procures the insurance of a risk by using the  
16 services of a full-time employee acting as an insurance  
17 manager or buyer;

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

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

21 (7) "Industrial insured captive insurer" means a  
22 company that insures risks of the industrial insureds that  
23 comprise the industrial insured group and the group's  
24 affiliated companies.

25 (8) "Industrial insured group" means either:

(a) a group of industrial insureds that collectively:  
 (i) own, control, or hold with power to vote all of the outstanding voting securities of an industrial insured captive insurer that is incorporated as a stock insurer; or

(ii) have complete voting control over an industrial insured captive insurer that is incorporated as a mutual insurer; or

(b) a group that is created under the Product Liability Risk Retention Act of 1981 (15 U.S.C. 3901), as amended, as a corporation or other limited liability association taxable as a stock insurer or a mutual insurer under Montana law.

(9) "Member organization" means an individual, corporation, partnership, or association that belongs to an association.

(10) "Parent" means a corporation, partnership, or individual that directly or indirectly owns, controls, or holds with power to vote more than 50% of the outstanding voting securities of a pure captive insurer.

(11) "Pure captive insurer" means a company that insures risks of its parent and affiliated companies.

**NEW SECTION. Section 3. Certificate of authority -- procedure.** (1) A captive insurer, when permitted by its articles of incorporation or charter, may apply to the commissioner for a certificate of authority to transact the

kinds of insurance defined in 33-1-206(1)(a), 33-1-206(1)(b), 33-1-206(1)(d) through 33-1-206(1)(n), 33-1-209, 33-1-210, and 33-1-211 except that:

(a) a pure captive insurer may not insure a risk other than that of its parent and affiliated companies;

(b) an association captive insurer may not insure a risk other than that of the member organizations of its association and their affiliated companies;

(c) an industrial insured captive insurer may not insure a risk other than that of the industrial insureds that comprise the industrial insured group and the group's affiliated companies;

(d) a captive insurer may not provide personal motor vehicle or homeowner's insurance coverage or any component thereof;

(e) a captive insurer may not accept or cede reinsurance except as provided in [section 12]; and

(f) a captive insurer may provide excess workers' compensation insurance to its parent and affiliated companies unless prohibited by the laws of the state having jurisdiction over the transaction.

(2) A captive insurer may not transact any insurance business in this state unless:

(a) it first obtains from the commissioner a certificate of authority authorizing it to transact

1 insurance business in this state;

2 (b) its board of directors holds at least one meeting  
3 each year in this state;

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

6 (d) it appoints a resident registered agent to accept  
7 service of process and to otherwise act on its behalf in  
8 this state. If the registered agent cannot with reasonable  
9 diligence be found at the registered office of the captive  
10 insurer, the secretary of state is the agent of the captive  
11 insurer upon whom any process, notice, or demand may be  
12 served.

13 (3) Before receiving a certificate of authority, each  
14 applicant captive insurer shall file with the commissioner:

15 (a) a certified copy of its charter and bylaws, a  
16 statement under oath of its president and secretary showing  
17 its financial condition, and any other statements or  
18 documents required by the commissioner; and

19 (b) evidence of the following:

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

22 (ii) the adequacy of the expertise, experience, and  
23 character of each person who will manage it;

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

25 (iv) the adequacy of the loss prevention programs of

1 its parent, member organizations, or industrial insureds, as  
2 applicable; and

3 (v) other factors considered relevant by the  
4 commissioner in ascertaining whether the proposed captive  
5 insurer will be able to meet its policy obligations.

6 (4) Each captive insurer shall pay to the commissioner  
7 a nonrefundable fee as provided in 33-2-708 for the  
8 examination and investigation and the processing of its  
9 application for a certificate of authority. In addition, it  
10 shall pay a fee as provided in 33-2-708 for annual  
11 continuation of a certificate of authority. The commissioner  
12 may retain legal, financial, and examination services from  
13 outside the department, the reasonable cost of which may be  
14 charged to the applicant.

15 (5) If the commissioner is satisfied that the  
16 documents and statements filed by the captive insurer comply  
17 with [sections 1 through 19], he may grant a certificate of  
18 authority authorizing it to transact insurance business in  
19 this state. A certificate of authority issued under  
20 [sections 1 through 19] continues in force until suspended,  
21 revoked, or otherwise terminated. The certificate of  
22 authority must be continued by the captive insurer each year  
23 by payment before March 1 of the renewal fee required in  
24 33-2-708.

25 NEW SECTION. Section 4. Name of captive insurer. A

1 captive insurer may not adopt a name that is the same as,  
2 deceptively similar to, or likely to be confused with or  
3 mistaken for any other existing business name registered in  
4 the state of Montana.

5 NEW SECTION. Section 5. Minimum capital -- letter of  
6 credit. {t} The commissioner may not issue a certificate of  
7 authority to a pure captive insurer, an association captive  
8 insurer that is incorporated as a stock insurer, or an  
9 industrial insured captive insurer that is incorporated as a  
10 stock insurer unless it possesses and maintains unimpaired  
11 paid-in capital of:

12 {a}{1} in the case of a pure captive insurer, not less  
13 than \$100,000;

14 {b}{2} in the case of an association captive insurer  
15 that is incorporated as a stock insurer, not less than  
16 \$400,000; or

17 {c}{3} in the case of an industrial insured captive  
18 insurer that is incorporated as a stock insurer, not less  
19 than \$200,000.

20 {2}--The--capital--required-in-subsection-{1}--may-be-in  
21 the-form-of-cash-or-an-irrevocable-letter-of--credit--issued  
22 by-a-bank-chartered-by-the-state-of-Montana-or-a-member-bank  
23 of--the-federal-reserve-system-approved-by-the-commissioner;

24 NEW SECTION. Section 6. Minimum surplus -- letter of  
25 credit. {t} The commissioner may not issue a certificate of

1 authority to a captive insurer unless it possesses and  
2 maintains free surplus of:

3 {a}{1} in the case of a pure captive insurer, not less  
4 than \$150,000;

5 {b}{2} in the case of an association captive insurer  
6 that is incorporated as a stock insurer, not less than  
7 \$350,000;

8 {c}{3} in the case of an industrial insured captive  
9 insurer that is incorporated as a stock insurer, not less  
10 than \$300,000;

11 {d}{4} in the case of an association captive insurer  
12 that is incorporated as a mutual insurer, not less than  
13 \$750,000; or

14 {e}{5} in the case of an industrial insured captive  
15 insurer that is incorporated as a mutual insurer, not less  
16 than \$500,000.

17 {2}--The--surplus--required-in-subsection-{1}--may-be-in  
18 the-form-of-cash-or-an-irrevocable-letter-of--credit--issued  
19 by-a-bank-chartered-by-the-state-of-Montana-or-a-member-bank  
20 of--the-federal-reserve-system-approved-by-the-commissioner;

21 NEW SECTION. Section 7. Formation of a captive  
22 insurer in this state. (1) A pure captive insurer must be  
23 incorporated in this state as a stock insurer as defined in  
24 33-3-102.

25 (2) An association captive insurer or an industrial



1 insured captive insurer may be incorporated in this state:

2 (a) as a stock insurer as defined in 33-3-102; or

3 (b) as a mutual insurer as defined in 33-3-102.

4 (3) A captive insurer may not have less than three  
5 incorporators, of whom not less than two must be residents  
6 of this state.

7 (4) Before the articles of incorporation are  
8 transmitted to the secretary of state, the incorporators  
9 shall petition the commissioner to issue a certificate  
10 setting forth his finding that the establishment and  
11 maintenance of the proposed corporation will promote the  
12 general good of the state. To determine whether the  
13 corporation will promote the general good of the state, the  
14 commissioner shall consider:

15 (a) the character, reputation, financial standing, and  
16 purposes of the incorporators;

17 (b) the character, reputation, financial  
18 responsibility, insurance experience, and business  
19 qualifications of the officers and directors; and

20 (c) other aspects the commissioner considers  
21 advisable.

22 (5) The incorporators shall transmit to the secretary  
23 of state the articles of incorporation and the certificate  
24 described in subsection (4). The secretary of state shall  
25 record the articles of incorporation and the certificate.

1 (6) The capital stock of a captive insurer  
2 incorporated as a stock insurer must be issued at not less  
3 than par value.

4 (7) A least one of the members of the board of  
5 directors of a captive insurer incorporated in this state  
6 must be a resident of this state.

7 (8) A captive insurer formed under [sections 1 through  
8 19] has the privileges of and is subject to Title 35 and the  
9 applicable provisions of [sections 1 through 19]. If a  
10 provision of Title 35 conflicts with a provision of  
11 [sections 1 through 19], [sections 1 through 19] control.

12 NEW SECTION. Section 8. Annual statement. Prior to  
13 March 1 of each year, each captive insurer transacting  
14 insurance business in this state shall submit to the  
15 commissioner a statement of its financial condition,  
16 verified by oath of two of its executive officers. Each  
17 association captive insurer shall file its statement in the  
18 form required by 33-2-701. The commissioner shall by rule  
19 propose the form in which a pure captive insurer and an  
20 industrial insured captive insurer submit a statement of  
21 financial condition.

22 NEW SECTION. Section 9. Examinations -- costs. (1)  
23 Except as provided in subsection (2), the commissioner  
24 shall, not less than once every 3 years and whenever he  
25 considers it advisable, visit each authorized captive

insurer and thoroughly inspect and examine its affairs, transactions, accounts, records, and assets to ascertain its financial condition, its ability to fulfill its obligations, and its compliance with [sections 1 through 19].

(2) If the captive insurer is subject to a comprehensive annual audit by independent auditors approved by the commissioner, the commissioner may, in his discretion and upon application by a captive insurer, increase the 3-year period described in subsection (1) to 5 years.

(3) The examined captive insurer shall pay the costs of the examination. The commissioner shall pay to the credit of the general fund all money received by him for an examination or investigation conducted under this section.

**NEW SECTION. Section 10.** Grounds and procedures for suspension or revocation of certificate of authority. (1) The commissioner may suspend or revoke the certificate of authority of a captive insurer to transact insurance in this state for any of the following reasons:

- (a) insolvency or impairment of capital or surplus;
- (b) failure to meet the requirements of [section 5 or 6];
- (c) refusal or failure to submit an annual statement, as required by [section 8], or any other report required by law or by order of the commissioner;
- (d) failure to comply with the provisions of [sections

1 through 19] or its own articles of incorporation, charter, or bylaws;

(e) failure to submit to examination, as required by [section 9], or any related legal obligation;

(f) refusal or failure to pay the costs of examination as required by [section 9];

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

(h) failure to comply with any other laws of this state.

(2) If, upon examination, hearing, or other evidence, the commissioner finds that a captive insurer has committed any of the acts specified in subsection (1), he may, notwithstanding any other provision of [this code], suspend or revoke the certificate of authority if he finds it in the best interest of the public and the policyholders of the captive insurer.

**NEW SECTION. Section 11.** Legal investments. (1) An association captive insurer shall comply with the investment requirements contained in Title 33, chapter 2, part 8.

(2) A pure captive insurer or industrial insured captive insurer is not subject to any restrictions on allowable investments, including those limitations contained

1 in Title 33, chapter 2, part 8, except that the commissioner  
2 may prohibit or limit any investment that threatens the  
3 solvency or liquidity of such an insurer.

4 NEW SECTION. Section 12. Reinsurance. (1) A captive  
5 insurer may provide reinsurance on risks ceded by any other  
6 insurer.

7 (2) A captive insurer may take credit for reserves on  
8 risks or portions of risks ceded to reinsurers that have  
9 complied with 33-2-1205. A captive insurer must receive the  
10 prior approval of the commissioner before it may cede risks  
11 to or take credit for reserves on risks or portions of risks  
12 ceded to reinsurers that have not complied with 33-2-1205.

13 (3) In addition to credit for reinsurance allowed  
14 under 33-2-1205, a captive insurer may take credit for  
15 reserves on risks or portions of risks ceded to a pool,  
16 exchange, or association acting as a reinsurer that has been  
17 authorized by the commissioner. The commissioner may require  
18 any documents, financial information, or other evidence that  
19 the pool, exchange, or association will be able to provide  
20 adequate security for its financial obligations. The  
21 commissioner may deny authorization or impose any  
22 limitations on the activities of a reinsurance pool,  
23 exchange, or association that, in his judgment, are  
24 necessary and proper to provide adequate security for the  
25 ceding captive insurer and for the protection and benefit of

1 the public.

2 NEW SECTION. Section 13. Rating organizations --  
3 membership. A captive insurer may not be required to join a  
4 rating organization.

5 NEW SECTION. Section 14. Exemption from compulsory  
6 association. A captive insurer may not join or contribute  
7 financially to a plan, pool, association, or guaranty or  
8 insolvency fund in this state. A captive insurer, its  
9 insured, its parent or any affiliated company, or any member  
10 organization of its association may not receive a benefit  
11 from any plan, pool, association, or guaranty or insolvency  
12 fund for claims arising out of the operations of the captive  
13 insurer.

14 NEW SECTION. Section 15. Tax on premiums collected.  
15 (1) Subject to subsection (3), each authorized or formerly  
16 authorized captive insurer shall pay to the commissioner, on  
17 or before March 1 each year, a tax computed at the rate of  
18 8/10 of 1% on the first \$15 million and 6/10 of 1% on each  
19 additional dollar on the direct premiums collected or  
20 contracted for on policies or contracts of insurance  
21 covering property or risks in this state and on risks and  
22 property situated elsewhere upon which no premium tax is  
23 otherwise paid by the company during the preceding calendar  
24 year, after deducting from the direct premiums subject to  
25 the tax the amounts paid to policyholders as return premiums

1 or premium deposits returned or credited to policyholders.

2 (2) Subject to subsection (3), each authorized and  
3 formerly authorized captive insurer shall pay to the  
4 commissioner, on or before March 1 each year, a tax computed  
5 at the rate of 3/10 of 1% on the first \$15 million of  
6 assumed reinsurance premium and at the rate of 2/10 of 1% of  
7 each additional dollar. However, no reinsurance tax applies  
8 to premiums for risks or portions of risks that are subject  
9 to taxation on a direct basis pursuant to subsection (1). A  
10 reinsurance premium tax is not payable on the receipt of  
11 assets in exchange for the assumption of loss reserves and  
12 other liabilities of another insurer under common ownership  
13 and control if:

14 (a) the transaction is part of a plan to discontinue  
15 the operations of the other insurer; and

16 (b) the intent of the parties to the transaction is to  
17 renew or maintain the business with the captive insurer.

18 (3) If the aggregate taxes that a captive insurer is  
19 required to pay under subsections (1) and (2) is less than  
20 \$5,000 a year, the captive insurer shall pay a tax of \$5,000  
21 for that year.

22 (4) Two or more captive insurers under common  
23 ownership and control must be taxed as though they were a  
24 single captive insurer.

25 (5) For the purposes of subsection (4), "common

1 ownership and control" means:

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

6 (b) in the case of a mutual corporation, the direct or  
7 indirect ownership of 80% or more of the surplus and the  
8 voting power of two or more corporations by the same member  
9 or members.

10 (6) The taxes provided for in this section constitute  
11 all taxes collectible under the laws of this state from a  
12 captive insurer, and no occupation tax or other taxes may be  
13 levied or collected from a captive insurer by the state or  
14 by a county, city, or municipality within this state, except  
15 ad valorem taxes on real and personal property used in the  
16 production of income.

17 (7) ~~{a}-Except--as--provided-in-subsection-(7){b}-the~~  
18 THE commissioner shall promptly deposit the amounts received  
19 pursuant to this section to the credit of the general fund  
20 of this state.

21 ~~{b}-The--commissioner--shall--annually-deposit-7.5%-of~~  
22 ~~the-premium-tax-revenues-collected-pursuant-to-this--section~~  
23 ~~in--the--captive--insurer--regulatory--and-supervision-trust~~  
24 ~~account-pursuant-to-{section-10}-The-money-deposited--under~~  
25 ~~this--subsection-is-statutorily-appropriated,--as-provided-in~~

~~17-7-502, to the commissioner for purposes of regulating captive insurers under {sections 1 through 19}.~~

**NEW SECTION. Section 16.** Rules. The commissioner may adopt rules relating to captive insurers as are necessary to enable him to carry out the provisions of [sections 1 through 19].

**NEW SECTION. Section 17.** Other provisions applicable. (1) Except as provided in subsection (2), no provisions of [this code] apply to a captive insurer.

(2) The following chapters and sections of [this code] apply to captive insurers to the extent applicable and not in conflict with [sections 1 through 19]: chapter 1; chapter 2, part 8; 33-2-701; 33-2-708; 33-2-1205; CHAPTER 11; and [sections 1 through 19].

~~**NEW SECTION. Section 18.** Captive insurer regulatory and supervision trust account. (1) There is created in the state treasury an account within the state special revenue fund designated the "captive insurer regulatory and supervision trust account" for the purpose of providing the financial means for the commissioner of insurance to administer {sections 1 through 19}. Amounts collected pursuant to {section 15(7)(b)} must be credited to this fund.~~

~~(2) All payments from the captive insurer regulatory and supervision trust account for the maintenance of staff~~

~~and associated expenses, including contractual services as necessary, must be disbursed from the state treasury only upon warrants issued by the commissioner after receipt of proper documentation regarding services rendered and expenses incurred.~~

~~(3) At the end of each fiscal year, that portion of the balance in the captive insurer regulatory and supervision trust account that exceeds \$100,000 must be transferred to the general fund.~~

~~(4) The commissioner may anticipate receipts to the captive insurer regulatory and supervision trust account and issue warrants based on anticipated receipts.~~

**NEW SECTION. Section 18.** Penalties. A captive insurer that violates or causes or induces a violation of [sections 1 through 18 17] or a rule implementing a provision of [sections 1 through 18 17] is subject to a penalty as provided in 33-1-317.

**Section 19.** Section 33-2-708, MCA, is amended to read:

**"33-2-708. Fees and licenses.** (1) The commissioner shall collect in advance and the persons so served shall so pay to the commissioner the following fees and licenses:

(a) certificates of authority;

(i) for filing applications for original certificates of authority, articles of incorporation (except original articles of incorporation of domestic insurers as provided

1 in subsection (b) below) and other charter documents,  
 2 bylaws, financial statement, examination report, power of  
 3 attorney to the commissioner, and all other documents and  
 4 filings required in connection with such application and for  
 5 issuance of an original certificate of authority, if issued:  
 6 (A) domestic insurers ..... \$ 300.00  
 7 (B) foreign insurers ..... 300.00  
 8 (C) captive insurers.....300.00  
 9 (ii) annual continuation of certificate of authority ..  
 10 ..... 300.00  
 11 (iii) reinstatement of certificate of authority .....  
 12 ..... 25.00  
 13 (iv) amendment of certificate of authority .... 50.00  
 14 (b) articles of incorporation:  
 15 (i) filing original articles of incorporation of  
 16 domestic insurer, exclusive of fees required to be paid by  
 17 the corporation to the secretary of state ..... 20.00  
 18 (ii) filing amendment of articles of incorporation,  
 19 domestic and foreign insurers, exclusive of fees required to  
 20 be paid to the secretary of state by a domestic corporation  
 21 ..... 25.00  
 22 (c) filing bylaws or amendment thereto where required  
 23 ..... 10.00  
 24 (d) filing annual statement of insurer, other than as  
 25 part of application for original certificate of authority ..

1 ..... 25.00  
 2 (e) resident agent's license:  
 3 (i) application for original license, including  
 4 issuance of license, if issued (life and/or disability) ....  
 5 ..... 15.00  
 6 (ii) application for original license, including  
 7 issuance of license, if issued (other than life and/or  
 8 disability) ..... 15.00  
 9 (iii) appointment of agent, each insurer ..... 10.00  
 10 (iv) annual renewal, each insurer ..... 10.00  
 11 (v) temporary license ..... 10.00  
 12 (vi) amendment of license (excluding additions thereto)  
 13 or reissuance of master license ..... 10.00  
 14 (f) nonresident agent's license:  
 15 (i) application for original license, including  
 16 issuance of license, if issued (life and/or disability) ....  
 17 ..... 100.00  
 18 (ii) application for original license, including  
 19 issuance of license, if issued (other than life and/or  
 20 disability) ..... 100.00  
 21 (iii) appointment of agent, each insurer ..... 10.00  
 22 (iv) annual renewal, each insurer ..... 10.00  
 23 (v) amendment of license (excluding additions thereto)  
 24 or reissuance of master license ..... 10.00  
 25 (g) solicitor's license:

1 (i) application for original license, including  
 2 issuance of license, if issued ..... 15.00  
 3 (ii) annual renewal of license ..... 15.00  
 4 (iii) appointment of solicitor ..... 10.00  
 5 (h) examination for license as agent or solicitor,  
 6 each examination ..... 15.00  
 7 (i) surplus lines agent license:  
 8 (i) application for original license and for issuance  
 9 of license, if issued ..... 50.00  
 10 (ii) annual renewal of license ..... 50.00  
 11 (j) adjuster's license:  
 12 (i) application for original license and for issuance  
 13 of license, if issued ..... 15.00  
 14 (ii) annual renewal of license ..... 15.00  
 15 (k) insurance vending machine license, each machine,  
 16 each year ..... 10.00  
 17 (l) commissioner's certificate under seal (except when  
 18 on certificates of authority or licenses) ..... 10.00  
 19 (m) copies of documents on file in the commissioner's  
 20 office, per page ..... .50  
 21 (n) policy forms:  
 22 (i) filing each policy form ..... 25.00  
 23 (ii) filing each application, rider, endorsement,  
 24 amendment, insert page, schedule of rates, and clarification  
 25 of risks ..... 10.00

1 (iii) maximum charge if policy and all forms submitted  
 2 at one time or resubmitted for approval within 180 days ....  
 3 ..... 100.00  
 4 (2) The commissioner shall promptly deposit with the  
 5 state treasurer to the credit of the general fund of this  
 6 state all fines and penalties, those amounts received  
 7 pursuant to 33-2-311, 33-2-705, and 33-2-706, and any fees  
 8 and examination and miscellaneous charges received pursuant  
 9 to Title 33, chapter 11, part 1, that are collected by him  
 10 pursuant to Title 33 and the rules adopted thereunder.  
 11 (3) All fees are considered fully earned when  
 12 received. In the event of overpayment, only those amounts in  
 13 excess of \$10 will be refunded.  
 14 (4) All fees and examination and miscellaneous  
 15 charges, except fines or penalties or those amounts received  
 16 pursuant to 33-2-311, 33-2-705, or 33-2-706, collected by  
 17 the commissioner pursuant to Title 33 and the rules adopted  
 18 thereunder must be deposited in the insurance regulatory  
 19 trust account pursuant to 17-2-121 through 17-2-123."  
 20 **Section 21.**~~Section 17-7-582, MCA, is amended to read:~~  
 21 ~~"17-7-582. Statutory appropriations--definition--~~  
 22 ~~requisites--for--validity.--(1) A statutory appropriation is~~  
 23 ~~an appropriation made by permanent law that authorizes~~  
 24 ~~spending by a state agency without the need for a biennial~~  
 25 ~~legislative appropriation or budget amendment.~~

1 {2}--Except--as--provided--in--subsection--{4},--to--be  
2 effective,--a--statutory--appropriation--must--comply--with--both  
3 of--the--following--provisions:

4 {a}--The--law--containing--the--statutory--authority--must--be  
5 listed--in--subsection--{3}:

6 {b}--The--law--or--portion--of--the--law--making--a--statutory  
7 appropriation--must--specifically--state--that--a--statutory  
8 appropriation--is--made--as--provided--in--this--section:

9 {3}--The--following--laws--are--the--only--laws--containing  
10 statutory--appropriations:--2-9-202;--2-17-105;--2-18-012;  
11 10-3-203;--10-3-312;--10-3-314;--10-4-301;--13-37-304;  
12 15-25-123;--15-31-702;--15-36-112;--15-65-121;--15-70-101;  
13 16-1-404;--16-1-410;--16-1-411;--17-3-212;--17-5-404;--17-5-424;  
14 17-5-804;--19-8-504;--19-9-702;--19-9-1007;--19-10-205;  
15 19-10-305;--19-10-506;--19-11-512;--19-11-513;--19-11-606;  
16 19-12-301;--19-13-604;--20-4-109;--20-6-406;--20-8-111;  
17 23-5-610;--23-5-1027;--33-31-212;--33-31-401;--37-51-501;  
18 39-71-2504;--53-6-150;--53-24-206;--67-3-205;--75-1-1101;  
19 75-7-305;--76-12-123;--80-2-103;--80-2-220;--82-11-136;  
20 90-3-301;--90-3-302;--90-3-412;--90-4-215;--90-9-306;--90-15-103;  
21 section-13,--House--Bill--No.--861;--laws--of--1985;--and--section-17  
22 Chapter-454;--Laws--of--1987;--and--{section-15}:

23 {4}--There--is--a--statutory--appropriation--to--pay--the  
24 principal;--interest;--premiums;--and--costs--of--issuing;--paying;  
25 and--securing--all--bonds;--notes;--or--other--obligations;--as--due;

1 that--have--been--authorized--and--issued--pursuant--to--the--laws--of  
2 Montana;--Agencies--that--have--entered--into--agreements  
3 authorized--by--the--laws--of--Montana--to--pay--the--state  
4 treasurer;--for--deposit--in--accordance--with--17-2-101--through  
5 17-2-107;--as--determined--by--the--state--treasurer;--an--amount  
6 sufficient--to--pay--the--principal--and--interest--as--due--on--the  
7 bonds--or--notes--have--statutory--appropriation--authority--for  
8 such--payments;--{in--subsection--{3}};--pursuant--to--sec--15;--Ch--  
9 607;--B;--1987;--the--inclusion--of--15-65-121--terminates--June--30,  
10 1989;--pursuant--to--sec--107;--Ch--664;--B;--1987;--the--inclusion  
11 of--39-71-2504--terminates--June--30;--1991;--and--pursuant--to--sec--  
12 67;--Ch--454;--B;--1987;--the--inclusion--of--sec--17;--Ch--454;--B;--  
13 1987;--terminates--July--1;--1988;}"

14 NEW SECTION. Section 20. Extension of authority. Any  
15 existing authority to make rules on the subject of the  
16 provisions of [this act] is extended to the provisions of  
17 [this act].

18 NEW SECTION. Section 21. Codification instruction.  
19 {1} [Sections 1 through 17 and 19 18] are intended to be  
20 codified as an integral part of Title 33, and the provisions  
21 of Title 33 apply to [sections 1 through 17 and 19 18].

22 {2}--{Section--18}--is--intended--to--be--codified--as--an  
23 integral--part--of--Title--17;--chapter--2;--part--17;--and--the  
24 provisions--of--Title--17;--chapter--2;--part--17--apply--to--{section  
25 18}:



1        NEW SECTION.   **Section 22.**   Saving   clause.   [This   act]  
2   does not affect rights and duties that matured, penalties  
3   that were incurred, or proceedings that were begun before  
4   [the effective date of this act].

5        NEW SECTION.   **Section 23.**   Severability. If a part of  
6   [this act] is invalid, all valid parts that are severable  
7   from the invalid part remain in effect. If a part of [this  
8   act] is invalid in one or more of its applications, the part  
9   remains in effect in all valid applications that are  
10   severable from the invalid applications.

-End-