



ADMINISTRATIVE RULES OF MONTANA

6.6.6805 PERMITTED REINSURANCE

- (1) A captive insurance company authorized to do business in this state may take credit for reserves on risks ceded to a reinsurer subject to the following conditions:
 - (a) no credit is allowed for reinsurance if the reinsurance contract does not result in the complete transfer of the risk or liability to the reinsurer;
 - (b) no credit shall be allowed, as an asset or deduction from liability, to any ceding insurer for reinsurance unless the reinsurance is payable by the assuming insurer on the basis of the liability of the ceding insurer under the contract reinsured without diminution because of the insolvency of the ceding insurer;
 - (c) reinsurance must be effected through a written agreement of reinsurance setting forth the terms, provisions and conditions governing the reinsurance; and
 - (d) the commissioner may require that complete copies of all reinsurance treaties and contracts be filed and/or approved by him.
- (2) Credit for reinsurance of captive risk retention groups shall be permitted if reinsurer complies with 33-2-1216, MCA.
- (3) If a captive risk retention group does not qualify for reinsurance under (2), credit for reinsurance may still be permitted if the reinsurer:
 - (a) maintains an A- or higher A.M. Best rating, or other comparable rating from a nationally recognized statistical rating organization;
 - (b) maintains a minimum surplus as regards policyholders in an amount acceptable to the commissioner based upon a review of the reinsurer's most recent audited financial statements; and
 - (c) is licensed and domiciled in a jurisdiction acceptable to the commissioner.
- (4) If a captive risk retention group does not qualify for reinsurance under (2) or (3), credit for reinsurance may still be permitted if the reinsurer satisfies all of the following requirements and any other requirements deemed necessary by the commissioner:
 - (a) the risk retention group licensed as a captive insurer shall file the reinsurer's audited financial statements. The commissioner shall analyze these statements for appropriateness of the reserve credit, and the initial and continued financial condition of the reinsurer. The statements shall be filed:
 - (i) annually;

- (ii) at the request of the commissioner; or
 - (iii) if the risk retention group thinks it appropriate, more often.
- (b) the reinsurer shall demonstrate to the satisfaction of the commissioner that it maintains a ratio of net written premium, wherever written, to surplus as regards policyholders of not more than 3 to 1;
- (c) the affiliated reinsurer shall not write third-party business without obtaining prior written approval from the commissioner;
- (d) the reinsurer shall not use cell arrangements without obtaining approval from the commissioner;
- (e) the reinsurer shall be licensed and domiciled in a jurisdiction acceptable to the commissioner; and
- (f) the reinsurer shall submit to the examination authority of the commissioner.
- (5) Risk retention groups shall not receive statement credit if:
 - (a) all policies are ceded through 100% reinsurance arrangements; or
 - (b) the commissioner requires a maximum ceded reinsurance percentage of less than 100% and the risk retention group exceeds the approved percentage. The portion within the approved amount may still qualify for state credit if the reinsurer is eligible under (2), (3), or (4).
- (6) The commissioner shall require:
 - (a) a reinsurer not domiciled in the U.S. to include language in the reinsurance agreement that states that in the event of the reinsurer's failure to perform its obligations under the terms of its reinsurance agreement, it shall submit to the jurisdiction of any court of competent jurisdiction in the U.S.; or
 - (b) for credit for reinsurance and solvency regulatory purposes, the commissioner may require any of the following collateral:
 - (i) an approved funds-held agreement;
 - (ii) letter of credit; or
 - (iii) trust or other acceptable collateral based on paid losses, unearned premium, and LAE reserves.
- (7) Upon application, the commissioner may waive the reinsurance requirements of (4)(b) in circumstances where the risk retention group licensed as a captive insurer or reinsurer can demonstrate to the satisfaction of the commissioner that the reinsurer:
 - (a) is sufficiently capitalized based upon an annual review of the reinsurer's most recent audited financial statements;
 - (b) the reinsurer is licensed and domiciled in a jurisdiction satisfactory to the commissioner; and
 - (c) the proposed reinsurance agreement adequately protects the risk retention group licensed as a captive insurer and its policyholders. Any such waiver should be included in the plan of operation, or any subsequent revision or amendment of the plan, pursuant to Section 3902(d)(1) of the Federal Liability Risk Retention Act of 1986, and the plan must be

submitted by the risk retention group licensed as a captive insurer to the commissioner of its state of domicile and each state in which the risk retention group licensed as a captive insurer intends to do business, or is currently registered. Any such waiver of (4) requirement constitutes a change in the risk retention group's plan of operation in each of those states.

- (8) Upon application, the commissioner may waive either of the reinsurance requirements in (6) in circumstances where the risk retention group licensed as a captive insurer or reinsurer can demonstrate to the satisfaction of the commissioner that:
 - (a) the reinsurer is sufficiently capitalized based upon an annual review of the reinsurer's most recent audited financial statements;
 - (b) the reinsurer is licensed and domiciled in a jurisdiction satisfactory to the commissioner, and
 - (c) the proposed reinsurance agreement adequately protects the risk retention group licensed as a captive insurer and its policyholders. Any such waiver should be disclosed in Note 1 of the risk retention group's annual statutory financial statement.
- (9) Each approved risk retention group licensed as a captive insurer shall assess its reinsurance program and within 60 days of the effective date of these guidelines, submit a written report to the commissioner indicating whether such risk retention group licensed as a captive is in compliance with these guidelines. All risk retention groups licensed as captive insurers that fail to submit the report in a timely manner may be examined, at the risk retention group's expense, to determine compliance with these guidelines.
- (10) These guidelines are effective December 9, 2011, and apply to risk retention groups licensed as captive insurers. Risk retention groups licensed as captive insurers who require additional time to comply with these guidelines shall be permitted to take credit for reinsurance for risks ceded to reinsurers not in compliance with these guidelines for a period not to exceed 12 months from the effective date of these guidelines upon satisfactory demonstration to the commissioner that such delay of implementation will not cause a hazardous financial condition or potential harm to its member policyholders.

Authorizing statute(s): 33-2-121, 33-28-102, 33-28-206, MCA

Implementing statute(s): 33-28-203, MCA

History: NEW, 2002 MAR p. 171, Eff. 2/1/02; AMD, 2011 MAR p. 2516, Eff. 11/26/11; AMD, 2017 MAR p. 1888, Eff. 10/14/17.