

MONTANA DEPARTMENT OF INSURANCE

840 Helena Avenue
Helena, MT 59601

RISK RETENTION GROUP REGISTRATION APPLICATION

Section I: Risk Retention Group Information

- 1. Exact name of Risk Retention Group _____

- 2. Other names under which the Risk Retention Group is or may be doing business in this state or any other state if different than above _____
- 3. Principal place of business
 - a. Street address _____
 - b. City _____ State _____ Zip _____
 - c. Mailing address _____
 - d. City _____ State _____ Zip _____
- 4. NAIC Identification Number _____
Federal Employer Identification Number _____
- 5. Phone number _____ Fax number _____
- 6. Contact person & title _____
- 7. a. Domiciliary state _____
b. Date of charter in domiciliary state _____
(Please attach a copy of the domiciliary state Certificate of Authority)
c. Form of organization or corporation _____
- 8. List the names, addresses, and occupations of the principal officers and directors of the Risk Retention Group. Attach additional page(s) if necessary and include a completed Biographical Affidavit (attached to application) for each individual listed below.

9. List the name, address and telephone number of the company responsible for management of the insurance operations of this Risk Retention Group and the contact person at the company.

10. Lines of insurance authorized to engage in under the laws of its chartering state.

11. List the states where business will be transacted.

12. Ownership of the Risk Retention Group consists of one or the other of the following:

(Check one)

The owners of the Group are the only persons who comprise the membership of the Group and who are provided insurance by the Group;

The sole owner of the Group is. _____
(Give name and address of the owner)

13. A copy of the Risk Retention Group's financial statement as certified by an independent accountant and as submitted to its state of domicile is attached. Yes ___ No _____. If no why _____

14. A Statement of Opinion on loss and loss adjustment expense reserves made by a member of the American Academy of Actuaries and as submitted to its state of domicile is attached. Yes ___ No _____. If no why _____

15. A copy of the most recent examination of the Risk Retention Group by the appropriate insurance regulatory official is attached. Yes ___ No _____. If no why _____

16. The Montana Insurance Department appointment of attorney to accept service of process form has been completed and is attached. Yes ___ No _____.

17. Amount of Capital or Surplus required by state of domicile. \$ _____.

18. Capitalization if a stock company or funding if mutual or reciprocal is:

a. Amount of Paid-In Capital \$ _____.

b. Amount of Contributed Surplus \$ _____.

Section II: Agent Information

A person acting or offering to act as a producer for a Risk Retention Group that solicits members, sells insurance coverage, purchases coverage for its members located within the state of Montana, or otherwise does business in Montana shall, before commencing such activity, obtain an insurance producer license from the Montana Commissioner of Insurance.

1. Will an insurance producer be used? Yes_____ No_____
2. Name and address of insurance producer. _____

3. Type of Montana license held
 - a. Resident producer: License number_____
 - b. Non-resident producer: License number_____

Section III: Risk Retention Group Statements (check the appropriate answer.)

1. The primary activity of this Risk Retention Group consists of assuming and spreading all or any portion of the liability exposure of its members. Yes_____ No_____
2. The Risk Retention Group is organized for the primary purpose of conducting the activity under (1) above. Yes_____ No_____
3. The Risk Retention Group does not exclude any person from membership in the Group solely to provide for members of the Group a competitive advantage over such a person.
Yes _____ No _____
4. The Risk Retention Group has submitted to the Montana Insurance Commissioner, as part of this application and before it has offered any insurance in Montana, a copy of the plan of operation or feasibility study which it has filed with the Insurance Commissioner (Director, Superintendent) of its chartering state. This plan of study discloses the name of the state in which the Group is chartered, as well as the Group's principal place of business, and such plan or study further includes the coverages, deductibles, coverage limits, rates and rating classification systems for each line of insurance the Group intends to offer. The Group will promptly submit to the Montana Insurance Commissioner any revisions of such plan or study to reflect any changes to the plan including, but without limitation, change in the designation of the Group's chartering state.
Yes _____ No _____

5. The Risk Retention Group will comply with the unfair claim settlement practices laws of Montana. Yes _____ No _____
6. The Risk Retention Group will pay, on a non-discriminatory basis, applicable premium and other taxes which are levied on such Group under the laws of Montana. Yes _____ No _____
7. The Risk Retention Group will submit a copy of each examination of the Risk Retention Group as certified by the insurance regulatory official of the state in which the examination was conducted or public official conducting the examination. Yes _____ No _____
8. The Risk Retention Group will submit to an examination by the Montana Insurance Commissioner to determine the Group's financial condition, if:
 - a) the Insurance Commissioner (Director, Superintendent) of the Group's chartering state has not begun or has refused to initiate an examination of the Group; and
 - b) any such examination by the Insurance Commissioner (Director, Superintendent) is coordinated so as to avoid unjustified duplication and unjustified repetition.Yes _____ No _____
9. The Risk Retention Group will comply with a lawful order issued in a delinquency proceeding commenced by the Montana Insurance Commissioner upon a finding of financial impairment or in a voluntary proceeding. Yes _____ No _____
10. The Risk Retention Group will comply with the laws of Montana concerning deceptive, false or fraudulent acts or practices, including any injunctions regarding such conduct obtained from a court of competent jurisdiction. Yes _____ No _____
11. The Risk Retention Group will comply with an injunction issued by a court of competent jurisdiction upon petition by the Insurance Commissioner alleging that the Group is in hazardous financial condition or is financially impaired. Yes _____ No _____
12. The Risk Retention Group will provide the following notice, in 10-point type, on the front page and the declaration page, the following notice:

"NOTICE"

This policy is issued by your Risk Retention Group. Your Risk Retention Group may not be subject to all of the insurance laws and regulations of your State. State insurance insolvency guaranty funds are not available for your Risk Retention Group."

Yes _____ No _____

13. The Risk Retention Group will submit a copy of its annual financial statement to the Montana Insurance Commissioner by March 1 of each year. The annual financial statement will be certified by an independent public accountant and include a statement of opinion on loss and loss adjustment expense reserves made by a member of the American Academy of Actuaries or a qualified loss reserve specialist under criteria established by the National Association of Insurance Commissioners (NAIC.) Yes _____ No _____
14. The Risk Retention Group will submit a copy of any audit performed with respect to the Risk Retention Group. Yes _____ No _____
15. The Risk Retention Group will not solicit or sell insurance to any person in Montana who is not eligible for membership in the Group. Yes _____ No _____

Section IV: Affirmation and Execution

I do hereby swear and affirm that the aforementioned statements and information are true and correct.

(Risk Retention Group Name)

By: _____

Title: _____

Subscribed and sworn to before me on the _____ day of _____ 20__ .

Notary Public for the State of _____
Residing at _____
My commission expires _____

**APPOINTMENT OF ATTORNEY TO ACCEPT
SERVICE OF PROCESS**

(hereinafter "Group"), duly organized under the laws of the State of _____
, appoints THE DULY ELECTED STATE AUDITOR AND COMMISSIONER OF INSURANCE
OF THE STATE OF MONTANA to be its lawful Attorney to receive service of legal process
issued against it in the State of Montana. The Group authorized the Commissioner, or, in the
Commissioner's absence, an employee of the Commissioner, to acknowledge service of legal
process on behalf of the Group in this state. The Group consents and agrees that any lawful
process against it that is served upon the Commissioner as appointed attorney shall have the
same legal force and validity as if served upon the Group and hereby waives all claim or right
of error by reason of such acknowledgement of service.

This authority may be withdrawn only upon a written notice of revocation and in any case shall
continue in effect so long as any liability arising out of this appointment remains outstanding in
the State of Montana and binds the assets or liabilities of the Group or any success in interest.
This instrument is executed pursuant to, and shall be construed to constitute full compliance
with, Title 33, Chapter 11 of the Montana Code Annotated.

IN WITNESS WHEREOF, said Group, pursuant to a resolution duly adopted by its Board of
Directors, has caused this instrument to be executed in its name by its President and Secretary,
and its corporate seal to be affixed, at the City of _____,
State of _____ this _____ day of _____, 20____.

President / Attorney-in-fact

Secretary / Attorney-in-fact

Name and address of the person to whom Service of Process is to be forwarded.

BIOGRAPHICAL AFFIDAVIT

To the extent permitted by law, this affidavit will be kept confidential by the state insurance regulatory authority.

(Print or Type)

Full Name, Address, and telephone number of the present or proposed entity under which this biographical statement is being required (Do Not Use Group Names). _____

In connection with the above-named entity, I herewith make representations and supply information about myself as hereinafter set forth. (Attach addendum or separate sheet if space hereon is insufficient to answer any question fully.) IF ANSWER IS "NO" OR "NONE," SO STATE.

1. a. Affiant's Full Name (Initials Not Acceptable). _____
b. Maiden Name (if applicable). _____
2. a. Have you ever had your name changed? _____ If yes, give the reason for the change and provide the full name(s).

- b. Other names used at any time (including aliases).

3. a. Are you a citizen of the United States?
b. Are you a citizen of any other country, if so, what country?
4. Affiant's Occupation or Profession. _____
5. Affiant's business address. _____
Business telephone. _____

Beginning/Ending
Dates (MM/YY) _____ - _____ Employers' Name _____
Address _____ City _____ State/Province _____
Country _____ Postal Code _____ Phone _____ Offices/Positions Held _____
Supervisor / Contact _____

Beginning/Ending
Dates (MM/YY) _____ - _____ Employers' Name _____
Address _____ City _____ State/Province _____
Country _____ Postal Code _____ Phone _____ Offices/Positions Held _____
Supervisor / Contact _____

10. a. Have you ever been in a position which required a fidelity bond? _____ If any claims were made on the bond, give details. _____
b. Have you ever been denied an individual or position schedule fidelity bond, or had a bond canceled or revoked? If yes, give details. _____

11. List any professional, occupational and vocational licenses (including licenses to sell securities) issued by any public or governmental licensing agency or regulatory authority or licensing authority that you presently hold or have held in the past. For any non-insurance regulatory issuer, identify and provide the name, address and telephone number of the licensing authority or regulatory body having jurisdiction over the license (s) issued. Attach additional pages if the space provided is insufficient. _____

Organization/Issuer of License _____ Address _____
City _____ State/Province _____ Country _____ Postal Code _____
License Type _____ License # _____ Date Issued (MM/YY) _____
Date Expired (MM/YY) _____ Reason for Termination _____
Non-insurance Regulatory Phone Number (if known) _____

Organization /Issuer of License _____ Address _____
City _____ State/Province _____ Country _____ Postal Code _____
License Type _____ License # _____ Date Issued (MM/YY) _____
Date Expired (MM/YY) _____ Reason for Termination _____
Non-insurance Regulatory Phone Number (if known) _____

12. In responding to the following, if the record has been sealed or expunged, and the affiant has personally verified that the record was sealed or expunged, an affiant may respond “no” to the question. Have you ever:
- a. Been refused an occupational, professional, or vocational license or permit by any regulatory authority, or any public administrative, or governmental licensing agency?

 - b. Had any occupational, professional, or vocational license or permit you hold or have held, been subject to any judicial, administrative, regulatory, or disciplinary action?

 - c. Been placed on probation or had a fine levied against you or your occupational, professional, or vocational license or permit in any judicial, administrative, regulatory, or disciplinary action? _____
 - d. Been charged with, or indicted for, any criminal offense(s) other than civil traffic offenses? _____
 - e. Pled guilty, or nolo contendere, or been convicted of, any criminal offense(s) other than civil traffic offenses?

 - f. Had adjudication of guilt withheld, had a sentence imposed or suspended, had pronouncement of a sentence suspended, or been pardoned, fined, or placed on probation, for any criminal offense(s) other than civil traffic offenses? _____
 - g. Been subject to a cease and desist letter or order, or enjoined, either temporarily or permanently, in any judicial, administrative, regulatory, or disciplinary action, from violating any federal, state law or law of another country regulating the business of insurance, securities or banking, or from carrying out any particular practice or practices in the course of the business of insurance, securities or banking? _____
 - h. Been, within the last ten (10) years, a party to any civil action involving dishonesty, breach of trust, or a financial dispute? _____
 - i. Had a finding made by the Comptroller of any state or the Federal Government that you have violated any provisions of small loan laws, banking or trust company laws, or credit union laws, or that you have violated any rule or regulation lawfully made by the Comptroller of any state or the Federal Government? _____
 - j. Had a lien, or foreclosure action filed against you or any entity while you were associated with that entity?

If the response to any question above is answered “Yes”, please provide details including dates, locations, disposition, etc. Attach a copy of the complaint and filed adjudication or settlement as appropriate.

13. List any entity subject to regulation by an insurance regulatory authority that you control directly or indirectly. The term “control” (including the terms “controlling,” “controlled by” and “under common control with”) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or non-management services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, ten percent (10%) or more of the voting securities of any other person. _____

If any of the stock is pledged or hypothecated in any way, give details. _____

14. Do [Will] you or members of your immediate family individually or cumulatively subscribe to or own, beneficially or of record, 10% or more of the outstanding shares of stock of any entity subject to regulation by an insurance regulatory authority, or its affiliates? An "affiliate" of, or person "affiliated" with, a specific person, is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified. If the answer is "Yes", please identify the company or companies in which the cumulative stock holdings represent 10% or more of the outstanding voting securities.

If any of the shares of stock are pledged or hypothecated in any way, give details.

15. Have you ever been adjudged a bankrupt? _____

16. To your knowledge has any company or entity for which you were an officer or director, trustee, investment committee member, key management employee or controlling stockholder, had any of the following events occur while you served in such capacity? If yes, please indicate and give details. When responding to questions (b) and (c) affiant should also include any events within twelve (12) months after his or her departure from the entity.

a. Been refused a permit, license, or certificate of authority by any regulatory authority, or Governmental-licensing agency? _____

b. Had its permit, license, or certificate of authority suspended, revoked, canceled, non-renewed, or subjected to any judicial, administrative, regulatory, or disciplinary action (including rehabilitation, liquidation, receivership, conservatorship, federal bankruptcy proceeding, state insolvency, supervision or any other similar proceeding)? _____

c. Been placed on probation or had a fine levied against it or against its permit, license, or certificate of authority in any civil, criminal, administrative, regulatory, or disciplinary action? _____

Note: If an affiant has any doubt about the accuracy of an answer, the question should be answered in the positive and an explanation provided.

Dated and signed this __ day of _____ at _____ I hereby certify under penalty of perjury that I am acting on my own behalf, and that the foregoing statements are true and correct to the best of my knowledge and belief.

(Signature of Affiant) _____
Date

State of _____ County of _____

The foregoing instrument was acknowledged before me this _____ day of _____, 20____ By _____, and:

- who is personally known to me, or
- who produced the following identification: _____

[SEAL]

Notary Public

Printed Notary Name

My Commission Expires

BIOGRAPHICAL AFFIDAVIT
Supplemental Information

(Print or Type)

To the extent permitted by law, this affidavit will be kept confidential by the state insurance regulatory authority.

Full Name, Address, and telephone number of the present or proposed entity under which this biographical statement is being required (Do Not Use Group Names).

1. a. Affiant's Full Name (Initials Not Acceptable) _____
b. Maiden Name (if applicable) _____
2. Affiant's Social Security Number _____
3. Government Identification Number if not a U.S. Citizen _____
4. Foreign Student ID# (if applicable) _____
5. Date of Birth: (MM/DD/YY) _____ Place of Birth: City _____
State/Province _____ Country _____
6. Name of Affiant's Spouse (if applicable) _____
7. List your residences for the last ten (10) years starting with your current address, giving:

Beginning/Ending

Dates (MM/YY)	Address	City	State/ Province	Country	Postal Code
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Dated and signed this _____ day of _____ at _____
I hereby certify under penalty of perjury that I am acting on my own behalf, and that the foregoing statements are true and correct to the best of my knowledge and belief.

(Signature of Affiant) _____
Date

State of _____ County of _____

The foregoing instrument was acknowledged before me this _____ day of _____, 20____ By _____, and:

- who is personally known to me, or
- who produced the following identification: _____

[SEAL]

Notary Public

Printed Notary Name

My Commission Expires

DISCLOSURE AND AUTHORIZATION CONCERNING BACKGROUND REPORTS*(All states except California, Minnesota and Oklahoma)*

This Disclosure and Authorization is provided to you in connection with pending or future application(s) of _____ **[insert company name]** (“Company”) for licensure or a permit to organize (“Application”) with a department of insurance in one or more states within the United States. Company desires to procure a consumer or investigative consumer report (or both) (“Background Reports”) regarding your background for review by a department of insurance in any state where Company pursues an Application during the term of your functioning as, or seeking to function as, an officer, member of the board of directors or other management representative (“Affiant”) of Company or of any business entities affiliated with Company (“Term of Affiliation”) for which a Background Report is required by a department of insurance reviewing any Application. Background Reports requested pursuant to your authorization below may contain information bearing on your character, general reputation, personal characteristics, mode of living and credit standing. The purpose of such Background Reports will be to evaluate the Application and your background as it pertains thereto. To the extent required by law, the Background Reports procured under this Disclosure and Authorization will be maintained as confidential.

You may obtain copies of any Background Reports about you from the consumer reporting agency (“CRA”) that produces them. You may also request more information about the nature and scope of such reports by submitting a written request to Company. To obtain contact information regarding CRA or to submit a written request for more information, contact _____ **[insert company’s designated person, position, or department, address and phone]**.

Attached for your information is a “Summary of Your Rights Under the Fair Credit Reporting Act.”

AUTHORIZATION: I am currently an Affiant of Company as defined above. I have read and understand the above Disclosure and by my signature below, I consent to the release of Background Reports to a department of insurance in any state where Company files or intends to file an Application, and to the Company, for purposes of investigating and reviewing such Application and my status as an Affiant. I authorize all third parties who are asked to provide information concerning me to cooperate fully by providing the requested information to CRA retained by Company for purposes of the foregoing Background Reports, except records that have been erased or expunged in accordance with law.

I understand that I may revoke this Authorization at any time by delivering a written revocation to Company and that Company will, in that event, forward such revocation promptly to any CRA that either prepared or is preparing Background Reports under this Disclosure and Authorization. This Authorization shall remain in full force and effect until the earlier of (i) the expiration of the Term of Affiliation, (ii) written revocation as described above, or (iii) twelve (12) months following the date of my signature below.

A true copy of this Disclosure and Authorization shall be valid and have the same force and effect as the signed original.

(Printed Full Name and Residence Address)

(Signature)

(Date)

State of _____ County of _____

The foregoing instrument was acknowledged before me this _____ day of _____ 20_____. By _____, who is personally known to me, or _____ who produced the following identification:

[SEAL]

Notary Public

Printed Notary Name

My Commission Expires

DISCLOSURE AND AUTHORIZATION CONCERNING BACKGROUND REPORTS (Minnesota and Oklahoma)

This Disclosure and Authorization is provided to you in connection with pending or future application(s) of _____ **[insert company name]** (“Company”) for licensure or a permit to organize (“Application”) with a department of insurance in one or more states within the United States. Company desires to procure a consumer or investigative consumer report (or both) (“Background Reports”) regarding your background for review by a department of insurance in any state where Company pursues an Application during the term of your functioning as, or seeking to function as, an officer, member of the board of directors or other management representative (“Affiant”) of Company or of any business entities affiliated with Company (“Term of Affiliation”) for which a Background Report is required by a department of insurance reviewing any Application. Background Reports requested pursuant to your authorization below may contain information bearing on your character, general reputation, personal characteristics, mode of living and credit standing. The purpose of such Background Reports will be to evaluate the Application and your background as it pertains thereto. To the extent required by law, the Background Reports procured under this Disclosure and Authorization will be maintained as confidential.

You may request more information about the nature and scope of Background Reports produced by any consumer reporting agency (“CRA”) by submitting a written request to Company. You should submit any such written request for more information, to _____ **[insert company’s designated person, position, or department, address and phone]**.

Attached for your information is a “Summary of Your Rights Under the Fair Credit Reporting Act.” You will be provided with a copy of any Background Report procured by Company if you check the box below.

- By checking this box, I request a copy of any Background Report from any CRA retained by Company, at no extra charge.

AUTHORIZATION: I am currently an Affiant of Company as defined above. I have read and understand the above Disclosure and by my signature below, I consent to the release of Background Reports to a department of insurance in any state where Company files or intends to file an Application, and to the Company, for purposes of investigating and reviewing such Application and my status as an Affiant. I authorize all third parties who are asked to provide information concerning me to cooperate fully by providing the requested information to CRA retained by Company for purposes of the foregoing Background Reports, except records that have been erased or expunged in accordance with law.

I understand that I may revoke this Authorization at any time by delivering a written revocation to Company and that Company will, in that event, forward such revocation promptly to any CRA that either prepared or is preparing Background Reports under this Disclosure and Authorization. This Authorization shall remain in full force and effect until the earlier of (i) the expiration of the Term of Affiliation, (ii) written revocation as described above, or (iii) twelve (12) months following the date of my signature below.

A true copy of this Disclosure and Authorization shall be valid and have the same force and effect as the signed original.

(Printed Full Name and Residence Address)

(Signature)

(Date)

State of _____ County of _____

The foregoing instrument was acknowledged before me this _____ day of _____, 20_____. By _____, who is personally known to me, or _____ who produced the following identification:

[SEAL]

Notary Public

Printed Notary Name

My Commission Expires

DISCLOSURE AND AUTHORIZATION CONCERNING BACKGROUND REPORTS (California)

This Disclosure and Authorization is provided to you in connection with a pending application of _____ **[insert company name]** (“Company”) for licensure or a permit to organize (“Application”) with a department of insurance in one or more states within the United States. Company desires to procure a consumer or investigative consumer report (or both) (“Background Reports”) regarding your background for review by any department of insurance in such states where Company is currently pursuing an Application, because you are either functioning as, or are seeking to function as, an officer, member of the board of directors or other management representative (“Affiant”) of Company or of any business entities affiliated with Company (“Term of Affiliation”) for which a Background Report is required by a department of insurance reviewing any Application. Background Reports will be obtained through _____ **[insert name of CRA, address]** (“CRA”). Background Reports requested pursuant to your authorization below may contain information bearing on your character, general reputation, personal characteristics, mode of living and credit standing. The purpose of such Background Reports will be to evaluate the Application and your background as it pertains thereto. To the extent required by law, the Background Reports procured under this Disclosure and Authorization will be maintained as confidential.

You may request more information about the nature and scope of Background Reports produced by any consumer reporting agency (“CRA”) by submitting a written request to Company. You should submit any such written request for more information, to _____ **[insert company’s designated person, position, or department, address and phone]**.

Attached for your information is a “Summary of Your Rights Under the Fair Credit Reporting Act.” You will be provided with a copy of any Background Report procured by Company if you check the box below.

By checking this box, I request a copy of any Background Report from any CRA retained by Company, at no extra charge.

Under section 1786.22 of the California Civil Code, you may view the file maintained on you by the CRA listed above. You may also obtain a copy of this file, upon submitting proper identification and paying the costs of duplication services, by appearing at the CRA in person or by mail; you may also receive a summary of the file by telephone. The CRA is required to have personnel available to explain your file to you and the CRA must explain to you any coded information appearing in your file. If you appear in person, you may be accompanied by one other person of your choosing, provided that person furnishes proper identification.

AUTHORIZATION: I am currently an Affiant of Company as defined above. I have read and understand the above Disclosure and by my signature below, I consent to the release of Background Reports to a department of insurance in any state where Company files or intends to file an Application, and to the Company, for purposes of investigating and reviewing such Application and my status as an Affiant. I authorize all third parties who are asked to provide information concerning me to cooperate fully by providing the requested information to CRA retained by Company for purposes of the foregoing Background Reports, except records that have been erased or expunged in accordance with law.

I understand that I may revoke this Authorization at any time by delivering a written revocation to Company and that Company will, in that event, forward such revocation promptly to any CRA that either prepared or is preparing Background Reports under this Disclosure and Authorization. In no event, however, will this authorization remain in effect beyond twelve (12) months following the date of my signature below.

A true copy of this Disclosure and Authorization shall be valid and have the same force and effect as the signed original.

(Printed Full Name and Residence Address)

(Signature)

(Date)

State of _____ County of _____

The foregoing instrument was acknowledged before me this _____ day of _____, 20____ By _____, who is personally known to me, or _____ who produced the following identification:

[SEAL]

Notary Public

Printed Notary Name

My Commission Expires

CHAPTER 11

LIABILITY RISK RETENTION AND PURCHASING GROUPS

Part 1

General Provisions

33-11-101. Purpose. The purpose of this part is to regulate the formation and operation of risk retention groups and purchasing groups in this state formed pursuant to the provisions of the federal Liability Risk Retention Act of 1986 (15 U.S.C. 3901, et seq.).

History: En. Sec. 1, Ch. 249, L. 1987.

33-11-102. Definitions. As used in this part, the following definitions apply:

(1) "Completed operations liability" means:

(a) liability arising out of the installation, maintenance, or repair of any product at a site that is not owned or controlled by:

(i) a person who performs that work; or

(ii) a person who hires an independent contractor to perform that work; and

(b) liability for activities that are completed or abandoned before the date of the occurrence giving rise to the liability.

(2) "Domicile", for purposes of determining the state where a purchasing group is domiciled, means:

(a) for a corporation, the state where the purchasing group is incorporated; and

(b) for an unincorporated entity, the state of its principal place of business.

(3) "Hazardous financial condition" means that, based on its present or reasonably anticipated financial condition, a risk retention group, although not yet financially impaired or insolvent, is unlikely to be able to:

(a) meet obligations to policyholders with respect to known claims and reasonably anticipated claims; or

(b) pay other obligations in the normal course of business.

(4) "Insurance" means primary insurance, excess insurance, reinsurance, surplus line insurance, and any other arrangement for shifting and distributing risk that is determined to be insurance under the laws of this state.

(5) (a) "Liability" means legal liability for damages, including costs of defense, legal costs and fees, and other claims expenses, because of injuries to other persons, damage to their property, or other damage or loss to other persons resulting from or arising out of:

(i) a business, whether profit or nonprofit, trade, product, service (including professional service), premises, or operation; or

(ii) an activity of any state or local government or an agency or political subdivision of state or local government.

(b) The term does not include personal risk liability or an employer's liability with respect to its employees other than legal liability under the federal Employers' Liability Act, 45 U.S.C. 51 through 60. As used in this subsection, "personal risk liability" means liability for damages because of injury to any person, damage to property, or other loss or damage resulting from personal, familial, or household responsibilities or activities rather than from responsibilities or activities referred to in subsection (5)(a).

(6) "Plan of operation or a feasibility study" means an analysis that presents the expected activities and results of a risk retention group, including at a minimum:

(a) the coverages, deductibles, coverage limits, rates, and rating classification systems for each line of insurance the group intends to offer;

(b) historical and expected loss experience of the proposed members and national experience of similar exposures to the extent this experience is reasonably available;

(c) pro forma financial statements and projections;

(d) appropriate opinions by a qualified independent casualty actuary, including a determination of minimum premium or participation levels required to commence operations and to prevent a hazardous financial condition;

(e) identification of management, underwriting procedures, managerial oversight methods, and investment policies; and

(f) other matters as may be prescribed by the commissioner for liability insurance companies authorized by the insurance laws of the state where the risk retention group is chartered.

(7) "Purchasing group" means a group that:

(a) has as one of its purposes the purchase of liability insurance on a group basis;

(b) purchases liability insurance only for its group members and only to cover their similar or related liability exposure, as described in subsection (7)(c);

(c) is composed of members whose businesses or activities are similar or related with respect to the liability to which members are exposed by virtue of any related, similar, or common business, trade, product, service, premises, or operation; and

(d) is domiciled in any state.

(8) "Risk retention group" means a corporation or other limited liability association formed under the laws of any state, Bermuda, or the Cayman Islands:

(a) whose primary activity consists of assuming and spreading all or any portion of the liability exposure of its group members;

(b) that is organized for the primary purpose of conducting the activity described under subsection (8)(a);

(c) (i) that is chartered and licensed as a liability insurance company and authorized to engage in the business of insurance under the laws of any state; or

(ii) that, before January 1, 1985, was chartered or licensed and authorized to engage in the business of insurance under the laws of Bermuda or the Cayman Islands and, before that date, had certified to the insurance regulatory official of at least one state that it satisfied the capitalization requirements of that state. However, the group is considered to be a risk retention group only if it has been engaged in business continuously since January 1, 1985, and only for the purpose of continuing to provide insurance to cover product liability or completed operations liability. For purposes of this subsection (8), "product liability" means liability for damages because of any personal injury, death, emotional harm, consequential economic damage, or property damage, including damages resulting from the loss of use of property, arising out of the manufacture, design, importation, distribution, packaging, labeling, lease, or sale of a product but does not include the liability of any person for those damages if the product involved was in the possession of that person when the incident giving rise to the claim occurred.

(d) that does not exclude any person from membership in the group solely to provide to members of the group a competitive advantage over the person;

(e) (i) that has as its members only persons who have an ownership interest in the group and that has as its owners only persons who are members and who are provided insurance by the risk retention group; or

(ii) that has as its sole member and sole owner an organization that is owned by persons who are provided insurance by the risk retention group;

(f) whose members are engaged in businesses or activities that are similar or related with respect to the liability to which the members are exposed by virtue of any related, similar, or common business, trade, product, service, premises, or operation;

(g) whose activities do not include the provision of insurance other than:

(i) liability insurance for assuming and spreading all or any portion of the liability of its group members; and

(ii) reinsurance with respect to the liability of any other risk retention group or member of the other group that is engaged in businesses or activities so that the group or member meets the requirement described in subsection (8)(f) for membership in the risk retention group that provides the reinsurance; and

(h) whose name includes the phrase "risk retention group".

(9) "State" means any state of the United States or the District of Columbia.

History: En. Sec. 2, Ch. 249, L. 1987; amd. Sec. 41, Ch. 379, L. 1995.

33-11-103. Chartering -- licensing -- plan of operation. (1) A risk retention group seeking to be chartered in this state must be chartered and licensed to write only casualty insurance pursuant to the insurance laws of this state and, except as provided in this part, shall comply with all of the laws, rules, regulations, and requirements applicable to the insurers chartered and authorized in this state, including 33-11-104, to the extent that the requirements are not a limitation on laws, rules, regulations, or requirements of this state. Before it may offer insurance in any state, the risk retention group shall also submit for approval to the commissioner a plan of operation or a feasibility study and revisions of the plan or study if the group intends to offer any additional lines of liability insurance.

(2) At the time of filing its application for charter, the risk retention group shall provide to the commissioner in summary form the following information:

(a) the identity of the initial members of the risk retention group;

(b) the identity of those individuals who organized the risk retention group or who will provide administrative services or otherwise influence or control the activities of the risk retention group;

(c) the amount and nature of initial capitalization;

(d) the coverages to be afforded; and

(e) the states in which the risk retention group intends to operate.

(3) Upon receipt of the information required under subsection (2), the commissioner shall forward the information to the national association of insurance commissioners. Providing this information to the national

association of insurance commissioners does not satisfy the requirements of 33-11-104 or any other section of this chapter.

(4) All risk retention groups chartered in this state shall file with the department and the national association of insurance commissioners an annual statement in a form prescribed by the national association of insurance commissioners and in diskette form, if required by the commissioner, and completed in accordance with its instructions and the national association of insurance commissioners' accounting practices and procedures manual.

History: En. Sec. 3, Ch. 249, L. 1987; amd. Sec. 63, Ch. 596, L. 1993.

33-11-104. Risk retention groups not chartered in this state. A risk retention group chartered in a state other than this state and seeking to do business as a risk retention group in this state must observe and abide by the laws of this state as follows:

(1) Before offering insurance in this state, a risk retention group shall submit to the commissioner:

(a) a statement identifying the state or states where the risk retention group is chartered and authorized as a casualty insurer, date of chartering, its principal place of business, and other information, including information on its membership, as the commissioner requires to verify that the risk retention group is qualified under 33-11-102(8);

(b) a copy of its plan of operation or a feasibility study and revisions of the plan or study submitted to its state of domicile. However, this provision relating to the submission of a plan of operation or a feasibility study does not apply with respect to any line or classification of liability insurance that was defined in the federal Product Liability Risk Retention Act of 1981 (15 U.S.C. 3901 through 3904) before it was amended by Public Law 99-563, approved on October 27, 1986, and that was offered before that date by a risk retention group that had been chartered and operated for not less than 3 years before that date; and

(c) a statement of registration that designates the commissioner as its agent for the purpose of receiving service of legal documents or process.

(2) A risk retention group doing business in this state shall submit to the commissioner:

(a) a copy of the group's financial statement submitted to its state of domicile, which must be certified by an independent public accountant and contain a statement of opinion on loss and loss adjustment expense reserves made by a member of the American academy of actuaries or by a qualified loss reserve specialist under criteria established by the national association of insurance commissioners;

(b) a copy of each examination of the risk retention group as certified by the insurance regulatory official of the state in which the examination was conducted or public official conducting the examination;

(c) upon request by the commissioner, a copy of any audit performed with respect to the risk retention group; and

(d) any information as may be required to verify the group's continuing qualification as a risk retention group under 33-11-102(8).

(3) (a) Each risk retention group is liable for the payment of premium taxes and taxes on premiums of direct business for risks resident or located within this state and shall report to the commissioner the net premiums written for risks resident or located within this state. The risk retention group is subject to taxation and any applicable interest, fines, and penalties for nonpayment that apply to foreign admitted insurers.

(b) To the extent that an insurance producer is used, the insurance producer shall report to the commissioner the premiums of direct business for risks resident or located within this state that the licensees have placed with or on behalf of a risk retention group not chartered in this state.

(c) To the extent that an insurance producer is used, the insurance producer shall keep a complete and separate record of all policies procured from each risk retention group. The record is open to examination by the commissioner, as provided in 33-1-408. The records must, for each policy and each kind of insurance provided under the policy, include the limit of liability, the time period covered, the effective date, the name of the risk retention group that issued the policy, the gross premium charged, and the amount of return premiums, if any.

(4) Each risk retention group, its insurance producers, and its representatives shall comply with Title 33, chapter 18, part 2.

(5) Each risk retention group shall comply with the provisions of Title 33, chapter 18, part 2, regarding deceptive, false, or fraudulent acts or practices. However, if the commissioner seeks an injunction regarding the risk retention group's conduct, the injunction must be obtained from a court of competent jurisdiction.

(6) Each risk retention group shall submit to an examination by the commissioner to determine its financial condition if the insurance regulatory official of the jurisdiction where the group is chartered has not initiated an examination or does not initiate an examination within 60 days after a request by the commissioner. The examination must be coordinated to avoid unjustified repetition and be conducted in an expeditious manner in accordance with the national association of insurance commissioners examiners handbook.

(7) Each policy issued by a risk retention group must contain, in 10-point type on the front page and the declaration page, the following notice:

"NOTICE

This policy is issued by your risk retention group. Your risk retention group may not be subject to all of the insurance laws and regulations of your state. State insurance insolvency guaranty funds are not available for your risk retention group."

(8) The following acts by a risk retention group are prohibited:

(a) the solicitation or sale of insurance by a risk retention group to any person who is not eligible for membership in the group; and

(b) the solicitation or sale of insurance by or operation of a risk retention group that is in a hazardous financial condition or is financially impaired.

(9) A risk retention group is not allowed to do business in this state if an insurer is directly or indirectly a member or owner of the risk retention group, other than in the case of a risk retention group all of whose members are insurers.

(10) A risk retention group may not offer insurance policy coverage declared unlawful by the Montana supreme court.

(11) A risk retention group not chartered in this state and doing business in this state shall comply with a lawful order issued in a voluntary dissolution proceeding or in a delinquency proceeding commenced by the insurance regulatory official of any state if there has been a finding of financial impairment after an examination under subsection (6).

(12) Upon completion of registration requirements, the commissioner shall issue to the risk retention group a proper certificate of registration.

(13) A risk retention group that violates any provision of this chapter is subject to fines and penalties, including revocation of the right to do business in this state, applicable to licensed insurers generally.

History: En. Sec. 4, Ch. 249, L. 1987; amd. Sec. 1, Ch. 713, L. 1989; amd. Sec. 14, Ch. 451, L. 1993; amd. Sec. 64, Ch. 596, L. 1993; amd. Sec. 42, Ch. 379, L. 1995.

33-11-105. Compulsory associations. (1) A risk retention group may not join or contribute financially to any insurance insolvency guaranty fund or similar mechanism in this state. In addition, a risk retention group or its insureds may not receive any benefit from any guaranty fund for claims arising out of the operations of the risk retention group.

(2) A risk retention group shall participate in this state's joint underwriting associations, mandatory liability pools, and similar mechanisms.

(3) When a purchasing group obtains insurance covering its members' risks from an insurer not authorized in this state or from a risk retention group, the risks, wherever resident or located, may not be covered by any insurance guaranty fund or similar mechanism in this state.

(4) When a purchasing group obtains insurance covering its members' risks from an authorized insurer, only risks resident or located in this state may be covered by the state guaranty fund, subject to Title 33, chapter 10, part 1.

History: En. Sec. 5, Ch. 249, L. 1987; amd. Sec. 56, Ch. 10, L. 1993; amd. Sec. 65, Ch. 596, L. 1993.

33-11-121. Administrative and procedural authority regarding risk retention groups and purchasing groups. The commissioner is authorized to use any powers established under this title to enforce the laws of this state so long as those powers are not specifically preempted by the federal Liability Risk Retention Act of 1986 (15 U.S.C. 3901, et seq.). The commissioner's powers include but are not limited to the commissioner's administrative authority to investigate, issue subpoenas, conduct depositions and hearings, issue orders, and impose penalties. With regard to any investigation, administrative proceedings, or litigation, the commissioner may rely on the procedural law and regulations of the state. The injunctive authority of the commissioner in regard to risk retention groups is restricted by the requirement that any injunction be issued by a court of competent jurisdiction.

History: En. Sec. 10, Ch. 249, L. 1987.

33-11-122. Penalties. A risk retention group that violates any provision of this part is subject to fines and penalties applicable to licensed insurers generally, including revocation of its license to do business in this state.

History: En. Sec. 11, Ch. 249, L. 1987.

33-11-123. Duty of insurance producers to obtain license. A person acting or offering to act as an insurance producer for a risk retention group or purchasing group that solicits members, sells insurance coverage, purchases coverage for its members located within the state, or otherwise does business in this state shall, before commencing such activity, obtain a license from the commissioner.

History: En. Sec. 12, Ch. 249, L. 1987; amd. Sec. 1, Ch. 713, L. 1989.

33-11-124. Enforceability of orders issued in United States district court. An order issued by any district court of the United States enjoining a risk retention group from soliciting or selling insurance or operating in any state, territory, or possession of the United States upon a finding that such a group is in a hazardous financial condition is enforceable in the courts of this state.

History: En. Sec. 13, Ch. 249, L. 1987.

33-11-125. Rules and regulations. The commissioner may make and amend any reasonable rules relating to risk retention groups and purchasing groups necessary or desirable to carry out the provisions of this part.

History: En. Sec. 14, Ch. 249, L. 1987.