

806 KAR 49:050. Captive risk retention groups.

RELATES TO: KRS 304.1-050, 304.3-400 – 304.3-430, 304.3-500 – 304.3-570, 304.5-130, 304.5-140, 304.5-150, 304.9-020(10), 304.9-700 – 304.9-759, 304.24-100, 304.37-010 – 304.37-150, 304.45-020(11), 304.45-030, 304.49-010, 304.49-060, 304.49-110, 304.49-170

STATUTORY AUTHORITY: KRS 304.2-110, 304.49-140

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the Commissioner of Insurance to make administrative regulations necessary for or as an aid to the effectuation of any provisions of the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.49-140 permits the commissioner to establish administrative regulations relating to captive insurance companies that are necessary to carry out the provisions of KRS 304.49-010 to 304.49-230. This administrative regulation provides reinsurance, financial solvency, and consumer protection requirements for captive risk retention groups.

Section 1. Definitions.

- (1) "Captive insurer" is defined by KRS 304.49-010(3).
- (2) "Commissioner" is defined by KRS 304.1-050(1).
- (3) "Department" is defined by KRS 304.1-050(2).
- (4) "Insurance producer" is defined by KRS 304.9-020(10).
- (5) "Protected cell" is defined by KRS 304.49-010(20).
- (6) "Reinsurance intermediary" is defined by KRS 304.9-700(5).
- (7) "Risk retention group" is defined by KRS 304.45-020(11).

Section 2. Permitted Reinsurance for Risk Retention Groups Licensed as Captive Insurers. Risk retention groups shall not receive credit on a quarterly or annual financial statement if all policies are ceded through 100 percent reinsurance arrangements.

Section 3. Credit for Reinsurance.

- (1) Credit for reinsurance shall be permitted if the reinsurer complies with KRS 304.5-130, 304.5-140, 304.5-150 and 806 KAR 5:025.
- (2) Credit for reinsurance may 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)
 1. Maintains a minimum policyholder surplus in an amount acceptable to the commissioner based upon a review of the reinsurer's most recent audited financial statements; and
 2. Is licensed and domiciled in a jurisdiction in the United States or an established offshore domicile; or
 - (c) Satisfies all of the following requirements:
 1. The captive manager or risk retention group licensed as a captive insurer shall file annually, on or before June 30, the reinsurer's audited financial statements, which shall be analyzed by the commissioner to assess the appropriateness of the reserve credit or the initial and continued financial condition of the reinsurer;
 2. The reinsurer shall demonstrate that it maintains a ratio of net written premium, wherever written, to surplus and capital of not more than three (3) to one (1);
 3. The affiliated reinsurer shall not write third-party business without obtaining prior written approval from the commissioner;
 4. The reinsurer shall not use a protected cell arrangement without obtaining prior written approval from the commissioner;
 5. The reinsurer shall be licensed and domiciled in a jurisdiction either in the United States or in an established offshore domicile; and

6. The reinsurer shall submit to the examination authority of the commissioner.

Section 4. Additional Reinsurance Requirements.

- (1) The commissioner shall require a reinsurer not domiciled in the United States to:
 - (a) Include language in the reinsurance agreement that states that if the reinsurer fails to perform its obligations under the terms of its reinsurance agreement, the reinsurer shall submit to the jurisdiction of any court of competent jurisdiction in the United States; or
 - (b) Be compliant with subsection (2) of this section.
- (2) For credit for reinsurance and solvency regulatory purposes, the commissioner may require a reinsurer to provide to the ceding company an approved funds-held agreement, letter of credit, trust or other acceptable collateral based on unearned premium, loss and loss adjustment expense reserves, and incurred but not reported claims reserves.

Section 5. Requirements for Waiver.

- (1)
 - (a) Upon application by the risk retention group, the commissioner may waive either of the reinsurance requirements in Section 3(2)(c)2. or Section 3(3)(c)6. of this administrative regulation if the risk retention group licensed as a captive insurer or reinsurer can demonstrate that:
 1. The reinsurer is sufficiently capitalized based upon an annual review of the reinsurer's most recent audited financial statements;
 2. The reinsurer is licensed and domiciled in a jurisdiction in the United States or in an established offshore domicile; and
 3. The proposed reinsurance agreement adequately protects the risk retention group licensed as a captive insurer and its policyholders.
 - (b) Any waiver granted in accordance with subsection (1)(a) of this section shall be:
 1. Included in the risk retention group's plan of operation, or any subsequent revision or amendment of the plan; and
 2. Submitted by the risk retention group licensed as a captive to the commissioner of its state of domicile and each state in which the risk retention group licensed as a captive intends to do business or is currently registered.
 - (c) Any waiver of a requirement in Section 3(2)(c)2. or Section 3(2)(c)6. of this administrative regulation shall be considered a change in the risk retention group's plan of operation in each of those states.
- (2)
 - (a) Upon application by the risk retention group, the commissioner may waive the requirements of Section 4(1) or (2) of this administrative regulation if the risk retention group licensed as a captive insurer or reinsurer can demonstrate that:
 1. The reinsurer is sufficiently capitalized based upon an annual review of the reinsurer's most recent audited financial statements;
 2. The reinsurer is licensed and domiciled in a jurisdiction in the United States or in an established offshore domicile; and
 3. The proposed reinsurance agreement adequately protects the risk retention group licensed as a captive insurer and its policyholders.
 - (b) Any waiver granted in accordance with subsection (2)(a) of this section shall be disclosed in Note 1 of the risk retention group's annual statutory financial statement.

Section 6. Limits on Risk. A risk retention group shall not retain any risk on any one (1) subject of insurance, whether located or to be performed in this state or elsewhere, in an amount exceeding ten (10) percent of its surplus to policyholders. Authorized reinsurance ceded shall be deducted in determining risk retained. The requirements on limits of risk in KRS 304.24-100 shall apply to newly formed domestic mutual insurers.

Section 7. Holding Company. Risk retention groups licensed as captive insurers shall make all required holding company filings mandated in KRS Chapter 304.37 on forms prescribed in 806 KAR 37:010. If a disclaimer of affiliation is filed, a copy of the disclaimer shall be filed as a change in business plan with all other states in which the company is registered.

Section 8. Reinsurance Intermediaries, Managing General Agents, and Producer Controlled Agents. A risk retention group licensed as a captive insurer shall comply with KRS 304.3-400 to 304.3-430, 304.3-500 to 304.3-570, and 304.9-700 to 304.9-759.

(38 Ky.R. 857; 1135; eff. 1-6-12; Crt eff. 2-26-2020.)