**DIVISION ONE – COMMERCIAL AUTOMOBILE**

212. FORMS PORTFOLIO REFERENCE

Paragraph **A.9.** is replaced by the following:

**9.** Montana Policy Changes Endorsement IL 12 08**.**

The following is added to Paragraph **B.:**

**1.** The following endorsement is applicable in addition to those referenced elsewhere in the manual:

Montana Medical Payments Coverage – Removal Of Reasonable Expenses Limitation Endorsement CA 01 72

If a policy contains the Auto Dealers Coverage Form or if Auto Medical Payments Coverage Endorsement CA 99 03 is attached to the Auto Dealers, Business Auto or Motor Carrier Coverage Form, you may attach optional Endorsement CA 01 72 to delete the potential limitation on payments for health care services described as "reasonable" medical expenses. Attachment of this endorsement eliminates your ability to challenge the reasonableness of fees charged for covered medical payments. If optional Endorsement **CA 01 72** is not attached, the insurer must be in compliance with MONT. CODE ANN. Section 33-15-308.

**2.** The following endorsements are mandatory and must be attached to all Commercial Auto Coverage Parts, except as noted below:

**a.** Montana Changes – Auto Dealers Coverage Form Endorsement CA 01 68 (for use with the Auto Dealers Coverage Form)

**b.** Montana Changes – Cancellation And Nonrenewal Endorsement CA 02 20

**c.** Montana Changes – Conformity With Statutes Endorsement IL 01 67

**d.** Montana Changes – Defense Costs Endorsement IL 01 32

**DIVISION FOUR – FARM**

A2. AMENDATORY ENDORSEMENTS

Attach Montana Changes Endorsement IL 02 43to all policies.

Attach Montana Changes – Conformity With Statutes Endorsement IL 01 67to all policies.

Attach Montana Changes – Defense Costs Endorsement IL 01 32to all policies.

If a policy contains Farm Property – Other Farm Provisions Form – Additional Coverages, Conditions, Definitions FP 00 90**,** attach Montana Changes – Mortgageholders Endorsement IL 01 29**.**

If a policy contains Farm Liability Coverage Form FL 00 20**,** then optional Endorsement Montana Changes – Medical Payments FL 01 79may be attached. Refer to Additional Rule A3. Medical Payments in these exceptions for further detail.

41. FARM UMBRELLA LIABILITY COVERAGE

Paragraph **A.2.c.(1)** is replaced by the following:

**(1)** Mandatory Endorsements (including those required for use in Montana):

**(a)** Montana Changes FB 01 15**.**

**(b)** Montana Changes – Cancellation And Nonrenewal Endorsement FB 02 13**.**

**(c)** Montana Changes – Conformity With Statutes IL 01 67**.**

**(d)** Montana Changes – Defense Costs Endorsement IL 01 32**.**

Paragraph **H.2.** is replaced by the following:

**2.** When a particular risk is modified in accordance with Paragraph **1.,** companies should maintain a complete file, including all details of the factors used in determining the modification. Each company is responsible for complying with regulatory requirements.

Note

Rates shall not be inadequate, excessive or unfairly discriminatory.

**DIVISION FIVE – FIRE AND ALLIED LINES**

14. BASIC FORMS AND ENDORSEMENTS APPLICABLE

The following is added to Rule **14.:**

**C.** Attach Montana Changes Endorsement IL 02 43 to all policies.

**D.** Attach Montana Changes – Conformity With Statutes Endorsement IL 01 67 to all policies.

**E.** If a policy contains one or more of the following: Building And Personal Property Coverage Form CP 00 10**,** Builders Risk Coverage Form CP 00 20**,** Condominium Association Coverage Form CP 00 17 or Standard Property Policy CP 00 99**,** attach Montana Changes – Mortgageholders Endorsement IL 01 29**.**

**F.** Attach Montana Changes – Defense Costs Endorsement IL 01 32 to all policies containing:

**1.** Legal Liability Coverage Form CP 00 40**;** or

**2.** Mortgageholders Errors And Omissions Coverage Form CP 00 70**.**

**DIVISION SIX – GENERAL LIABILITY**

22. DESCRIPTION OF COMMERCIAL GENERAL LIABILITY COVERAGE

Paragraph **C.3.** is replaced by the following:

**3.** Refer to mandatory state endorsements:

**a.** Montana Changes – Extended Reporting Periods Endorsement CG 27 07 (Claims-made Only).

**b.** Montana Changes – Conformity With Statutes Endorsement IL 01 67**.**

**c.** Montana Changes – Endorsement IL 02 43**.**

**d.** Montana Changes – Your Right To Claim Information Endorsement CG 27 44 (Claims-made Only).

**e.** Montana Changes – Defense Costs Endorsement IL 01 32**.**

42. ELECTRONIC DATA LIABILITY COVERAGE

Paragraph **A.2.c.** is replaced by the following:

**c.** Refer to Mandatory State Endorsements

**(1)** Montana Changes Endorsement CG 33 24**.**

**(2)** Montana Changes – Extended Reporting Periods Endorsement CG 27 07**.**

**(3)** Montana Changes – Defense Costs EndorsementIL 01 32**.**

44. PRODUCT WITHDRAWAL COVERAGE

Paragraph **A.1.b.(3**) is replaced by the following:

**(3)** Refer to mandatory state endorsements:

**(a)** Montana Changes Endorsement CG 33 24**.**

**(b)** Montana Changes – Defense Costs Endorsement IL 01 32**.**

45. LIQUOR LIABILITY COVERAGE (Subline Code 332)

Paragraph **B.3.c.** is replaced by the following:

**c.** Refer to mandatory state endorsements:

**(1)** Montana Changes – Extended Reporting Periods Endorsement CG 27 07 (Claims-made Only).

**(2)** Montana Changes – Conformity With Statutes Endorsement IL 01 67**.**

**(3)** Montana Changes Endorsement IL 02 43**.**

**(4)** Montana Changes – Your Right To Claim Information Endorsement CG 27 45 (Claims-made Only).

**(5)** Montana Changes – Defense Costs EndorsementIL 01 32**.**

Paragraph **G.5.** is replaced by the following:

G. Liquor Liability Grades

**5.** The Liquor Liability Numerical Grade is 5.

Citation of Statute: MONT. CODE ANN. Section 27-1-710

Comments:

The statute provides, in part, that:

Furnishing a person with alcoholic beverages is not a cause of, or grounds for finding the vendor liable for, injury or damage wholly or partially arising from an event involving the person who consumed the beverage, unless:

⚫ The consumer was under the legal drinking age (21) and the vendor knew that the consumer was underage or did not make a reasonable attempt to determine the consumer's age;

⚫ The consumer was visibly intoxicated when furnished the alcoholic beverage; or

⚫ The vendor forced or coerced the consumption or told the consumer that the beverage contained no alcohol.

A civil action may not be brought by a passenger over 18 years of age in the consumer's car or by the passenger's estate, legal guardian, or dependent.

A civil action may not be brought by the consumer or by the consumer's estate, legal guardian, or dependent unless the consumer was under the legal age and the furnishing person knew or should have known that the consumer was underage, or the furnishing person forced or coerced the consumption or told the consumer that the beverage contained no alcohol while knowing that it did.

A civil action may not be commenced under this section against a person or entity who furnished alcohol to the consumer unless the person bringing the civil action provides notice of an intent to file the action to the person or entity who furnished the alcohol by certified mail within 180 days from the date of sale or service. The civil action must be commenced pursuant to this section within two years after the sale or service.

In addition, in determining the cause of injuries or damages inflicted on another by the consumer of an alcoholic beverage, in addition to other admissible evidence, a jury or trier of fact shall consider:

⚫ The consumption of the alcoholic beverage;

⚫ The actions of the consumer;

⚫ The negligence of the person allegedly harmed by the consumer;

⚫ The visible and audible intoxication indicators actually observed by the person furnishing the alcoholic beverage to the consumer, including but not limited to bloodshot eyes, loud and boisterous behavior, fighting behavior, stumbling, and slurred speech; and

⚫ Independent intervening cause or multiple causes.

Also, because a furnishing person or entity can perceive only visual or audible indicators of intoxication, when determining liability, a jury or trier of fact may not consider:

⚫ A hypothetical blood alcohol level in any way to impute that the server observed visibly intoxicated behavior of the consumer prior to service;

⚫ An actual blood alcohol level in any way to impute that the server observed visibly intoxicated behavior of the consumer prior to service;

⚫ The signs of visible intoxication displayed by the consumer after the furnishing of the alcoholic beverage;

⚫ The conduct of the furnishing person or entity after the furnishing of the alcoholic beverage; or

⚫ Whether the furnishing person or entity holds special events, alcohol specials, happy hours, or similar events or activities.

The maximum total liability is $250,000 for each event for noneconomic damages for all claimants and $250,000 for punitive damages. Service to a visibly intoxicated consumer is not enough to assess punitive damages against the person or entity furnishing the alcoholic beverage to the consumer. Conduct must be shown that meets the criteria of actual malice or fraud. The "5" designation reflects this limitation and the other statutory provisions.

Paragraph **H.1.d.** is replaced by the following:

H. Special Rules Applicable To The Claims-made Coverage Form

1. Extended Reporting Periods

**d.** Refer to company for rating the Supplemental Extended Reporting Period Endorsement. However, the premium to be charged for the Supplemental Extended Reporting Period Endorsement shall not exceed 2.00 times the annual premium for the Liquor Liability Coverage being terminated.

46. OWNERS AND CONTRACTORS PROTECTIVE LIABILITY INSURANCE AND PRINCIPALS PROTECTIVE LIABILITY INSURANCE (Subline Code 335)

Paragraph **B.2.c.** is replaced by the following:

B. Description Of Owners Or Contractors Protective Liability Coverage

**2.** For details of coverage:

**c.** Refer to mandatory state endorsements:

**(1)** Montana Changes Endorsement CG 28 41**.**

**(2)** Montana Changes – Conformity With Statutes Endorsement IL 01 67**.**

**(3)** Montana Changes – Defense Costs Endorsement IL 01 32**.**

47. POLLUTION LIABILITY COVERAGE (Subline Code 350)

Paragraph **B.2.c.** is replaced by the following:

B. Description Of Pollution Liability Coverage

**2.** For details of coverage:

**c.** Refer to Mandatory State Endorsements

**(1)** Montana Changes – Extended Reporting Periods Endorsement CG 27 07**.**

**(2)** Montana Changes – Conformity With Statutes Endorsement IL 01 67**.**

**(3)** Montana Changes Endorsement IL 02 43**.**

**(4)** Montana Changes – Defense Costs EndorsementIL 01 32**.**

48. PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE (Subline Code 336)

Paragraph **A.3.c.** is replaced by the following:

**c.** Refer to mandatory state endorsements:

**(1)** Montana Changes – Extended Reporting Periods Endorsement CG 27 07 (Claims-made Only).

**(2)** Montana Changes – Conformity With Statutes Endorsement IL 01 67**.**

**(3)** Montana Changes Endorsement IL 02 43**.**

**(4)** Montana Changes – Your Right To Claim Information Endorsement CG 27 46 (Claims-made Only).

**(5)** Montana Changes – Defense Costs EndorsementIL 01 32**.**

Paragraph **A.16.** does not apply.

Paragraph **E.1.d.** is replaced by the following:

E. Special Rules Applicable To The Claims-made Coverage Form

1. Extended Reporting Periods

**d.** Refer to company for rating the Supplemental Extended Reporting Period Endorsement. However, the premium to be charged for the Supplemental Extended Reporting Period endorsement shall not exceed 2.00 times the annual premium for the products/completed operations liability coverage being terminated.

49. RAILROAD PROTECTIVE LIABILITY (Subline Code 335)

Paragraph **B.2.c.** is replaced by the following:

B. Description Of Railroad Protective Liability Coverage

**2.** For details of coverage:

**c.** Refer to Mandatory State Endorsements

**(1)** Montana Changes Endorsement CG 28 42**.**

**(2)** Montana Changes – Conformity With Statutes Endorsement IL 01 67**.**

**(3)** Montana Changes – Defense Costs EndorsementIL 01 32**.**

53. UNDERGROUND STORAGE TANK (UST) COVERAGE (Subline Code 350)

Paragraph **B.2.c.** is replaced by the following:

**c.** Refer to mandatory state endorsements:

**(1)** Montana Changes Endorsement CG 30 39**.**

**(2)** Montana Changes – Extended Reporting Periods Endorsement CG 27 07**.**

**(3)** Montana Changes – Defense Costs EndorsementIL 01 32**.**

**DIVISION TEN – BUSINESSOWNERS**

16. MANDATORY FORMS, COVERAGE AND LIMITS

The following is added to Paragraph **B.:**

B. Forms

9. Montana Changes Endorsement **BP 02 01**

Attach Montana Changes Endorsement BP 02 01 to all policies.

10. Montana Changes – Defense Costs Endorsement **BP 51 05**

Attach Montana Changes – Defense Costs Endorsement BP 51 05 to all policies.

Paragraph **D.** is replaced by the following:

D. Montana Policy Changes Endorsement **BP 12 33**

Montana Policy Changes Endorsement BP 12 33 may be used to describe policy changes or to add or delete additional coverages.

Paragraph **F.** is replaced by the following:

F. Cyber Incident Exclusions – Property Endorsement **BP 51 05**

One of the following endorsements must be attached to all policies:

1. Cyber Incident Exclusion – Montana Endorsement **BP 15 70**

a. Description

This endorsement excludes loss or damage caused directly or indirectly by a cyber incident. The exclusion in this endorsement includes an exception for fire or explosion.

b. Endorsement

Use Cyber Incident Exclusion – Montana Endorsement BP 15 70**.**

c. Premium Determination

**(1)** Calculate the adjusted premium by multiplying the Building and Business Personal Property premium determined in Rules **23.C.6.a.(3),** **29.A.12.e.** and **29.A.13.d.** by the factor in Table **16.F.1.c.(1)(RF).** The factor should be applied to both the Building and Business Personal Property premiums when both coverages are provided for a given risk.

**(2)** When Spoilage Coverage Endorsement BP 04 15 is also attached to the policy, calculate the adjusted premium for that endorsement by multiplying the premium determined in Rule **29.A.21.d.(3)** by the factor in Table **16.F.1.c.(2)(RF).**

2. Cyber Incident Exclusion With Ensuing Cause(s) Of Loss Exceptions – Montana Endorsement **BP 15 71**

a. Description

This endorsement excludes loss or damage caused directly or indirectly by a cyber incident. The exclusion in this endorsement includes an exception for fire or explosion. However, this endorsement also includes the option to provide coverage for additional applicable ensuing cause(s) of loss, other than fire or explosion, subject to individual per occurrence limits of insurance and/or an aggregate limit of insurance.

b. Endorsement

Use Cyber Incident Exclusion With Ensuing Cause(s) Of Loss Exceptions – Montana Endorsement BP 15 71**.**

c. Schedule

**(1)** Indicate in the Schedule a per occurrence Limit Of Insurance with respect to the applicable ensuing cause(s) of loss, other than fire or explosion, for one or more of the following coverages as desired:

**(a)** Cyber Incident Loss Or Damage To Covered Property Coverage;

**(b)** Cyber Incident Business Income Coverage; and/or

**(c)** Cyber Incident Extra Expense Coverage.

**(2)** If shown as applicable in the Schedule, the Cyber Incident Aggregate Limit Of Insurance is the maximum payable in any one policy year, regardless of the number of occurrences, for the total of all loss or damage for the coverages addressed in Paragraphs **F.2.c.(1)(a),** **F.2.c.(1)(b)** and **F.2.c.(1)(c),** as applicable.

**(3)** The Limit(s) Of Insurance described in Paragraphs **F.2.c.(1)** and **F.2.c.(2)** are part of, not in addition to, the applicable Limits Of Insurance shown in the Declarations.

d. Premium Determination

**(1)** Calculate the adjusted premium by multiplying the Building and Business Personal Property premium determined in Rules **23.C.6.a.(3),** **29.A.12.e.** and **29.A.13.d.** by the appropriate factor in Table **16.F.2.d.(1)(RF).** The factor should be applied to both the Building and Business Personal Property premiums when both coverages are provided for a given risk.

If a per occurrence Limit Of Insurance for Cyber Incident Loss Or Damage To Covered Property Coverage is indicated in the Schedule equal to the full limits of insurance provided in the policy, use the factors for Full Limit in Table **16.F.2.d.(1)(RF).** Otherwise, use the factors for Sublimit when any combination of Cyber Incident Loss Or Damage To Covered Property Coverage, Cyber Incident Business Income Coverage or Cyber Incident Extra Expense Coverage is provided.

If an Aggregate Limit Of Insurance is provided in the Schedule of the endorsement, use the factors for With Aggregate Limit; otherwise, use the factors for Without Aggregate Limit.

**(2)** When Spoilage Coverage Endorsement BP 04 15 is also attached to the policy, calculate the adjusted premium for that endorsement by multiplying the premium determined in Rule **29.A.21.d.(3)** by the factor in Table **16.F.2.d.(2)(RF).**

e. Rating Example

A standard Businessowners Policy with a $250,000 Building Limit of Insurance and a $50,000 Business Personal Property Limit of Insurance is issued with a $50,000 Cyber Incident Aggregate Limit Of Insurance and a $10,000 Cyber Incident Loss Or Damage To Covered Property Coverage per occurrence Limit Of Insurance indicated in the Schedule of Endorsement BP 15 71**.** Since the per occurrence Limit Of Insurance indicated in the Schedule of Endorsement BP 15 71 is less than the full limits of insurance provided in the policy, and is subject to an aggregate limit of insurance, the Sublimit with Aggregate Limit Factor is applied to the original Building and Business Personal Property premiums.

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
|  | Coverage | Starting Premium | | Cyber Factor | | Adjusted Premium | |
|  | **Building** | $ | 500 |  | 0.997 | $ | 499 |
|  | **Business Personal Property** |  | 200 |  | 0.997 |  | 199 |
|  | **Total** | $ | 700 |  |  | $ | 698 |

Table 16.F.2.e. Cyber Incident Exclusion With Ensuing Cause(s) Of Loss Exceptions Rating Example

71. MANDATORY FORMS, COVERAGE AND LIMITS

Paragraph **D.** is replaced by the following:

D. Montana Policy Changes – Micro-Businessowners Endorsement **BP 51 02**

Montana Policy Changes – Micro-Businessowners Endorsement BP 51 02 may be used to describe policy changes.

The following is added to Rule **71.:**

E. Montana Changes – Micro-Businessowners Endorsement **BP 51 01**

Attach Montana Changes – Micro-Businessowners Endorsement BP 51 01 to all policies.

F. Montana Changes – Defense Costs – Micro-Businessowners Endorsement **BP 51 04**

Attach Montana Changes – Defense Costs – Micro-Businessowners Endorsement BP 51 04 to all policies.

**DIVISION ELEVEN – EMPLOYMENT-RELATED PRACTICES LIABILITY**

20. DESCRIPTION OF EMPLOYMENT-RELATED PRACTICES LIABILITY COVERAGE

The following is added to Paragraph **B.2.:**

**c.** Montana Changes – Conformity With Statutes Endorsement IL 01 67**.**

**d.** Montana Changes Endorsement IL 02 43**.**

**e.** Montana Changes – Extended Reporting Period Endorsement EP 28 02**.**

**f.** Montana Changes EndorsementEP 01 55**.**

**DIVISION THIRTEEN – COMMERCIAL LIABILITY UMBRELLA**

22. DESCRIPTION OF COMMERCIAL LIABILITY UMBRELLA COVERAGE

Paragraph **C.3.** is replaced by the following:

**3.** Refer to mandatory state endorsements:

**a.** Montana Changes – Cancellation And Nonrenewal Endorsement CU 02 07**.**

**b.** Montana Changes – Conformity With Statutes IL 01 67**.**

**c.** Montana Changes – Defense Costs EndorsementIL 01 32**.**

50. DESCRIPTION OF EXCESS LIABILITY COVERAGE

Paragraph **C.3.** is replaced by the following:

**3.** Refer to mandatory state endorsements:

**a.** Montana Changes – Cancellation And Nonrenewal CX 02 34**.**

**b.** Montana Changes – Conformity With Statutes CX 02 48**.**

**c.** Montana Changes – Defense Costs CX 01 28**.**

The following is added to Rule **50.:**

E. Defense Within Limits

**1.** Montana Office of the Commissioner of Securities and Insurance Advisory Memorandum titled "Form Provisions Limiting Coverage Of Defense Expenses, Including Defense Within Limits Provisions Montana Code § 33-1-502" generally provides that:

⚫ Non-personal insurance forms containing at least $1,000,000 in aggregate policy limits;

⚫ Non-personal insurance forms filed by captive insurance companies or risk retention groups; and

⚫ Forms not otherwise addressed by the memorandum that provide a minimum of $50,000 in defense expense coverage per policy period;

may include defense within limits provisions. The Memorandum also provides, in part, that a form limiting coverage of defense expenses must conspicuously disclose such a limitation on both the insurance application and the declaration page.

**2.** With respect to the Commercial Excess Liability Coverage Part, if the limits of insurance of the controlling underlying insurance are reduced by defense expenses by the terms of that policy, any payments for defense expenses made by the excess liability insurer will reduce the applicable excess liability policy's limits of insurance in the same manner*.*

**3.** If defense expenses are included within the limits of insurance of the controlling underlying insurance, the Commercial Excess Liability Coverage Part will require:

**a.** A minimum Aggregate Limit of Insurance of $1,000,000; and

**b.** A conspicuous disclosure statement describing the nature and extent of the coverage limitation with respect to defense expenses. This statement must appear in both the application and the Declarations, in bold font at least two (2) points larger than the body of the respective document.