

THE RISK RETENTION ACT OF 1986

A Summary

On October 17, 1986, the President signed into law, the “Liability Risk Retention Act of 1986”, formally known as, the “Product Liability Risk Retention Act of 1981” as amended by the “Risk Retention Amendment of 1986”.

Herewith, are the highlights of this federal law. This summary description is NOT the text of the Act. For details see the Act itself.

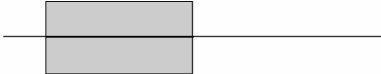
Section 1. is the short title, “Liability Risk Retention Act of 1986”.

Section 2. defines terms:

- “Insurance” means primary, excess or surplus insurance or reinsurance or any other arrangement which is determined by law to be a plan of insurance.
- “Liability” means legal liability for damages because of injuries or property damage or loss to other persons (including defense costs) arising out of:
 - Any business (profit or non-profit), trade, product, ordinary or professional services, premises or operations; or,
 - Any activity of any State or local government or government agency.

“Liability” does not include personal risk Liability or employers’ liability, except in limited circumstances.

- “Personal Risk Liability” means liability for personal injury or property damage arising from individual, family or household responsibilities or activities (i.e., non-business or government activity).



- “Risk Retention Group” means any corporation or other limited liability association:
 - Whose members are exposed to similar liability risks through their businesses, activities, functions or operations.
 - Whose primary activity is to spread members’ risks in whole or in part - in other words, to underwrite and provide “insurance”.
 - Whose activities are confined solely to providing liability insurance and reinsurance and related services for members.
 - Which is chartered and licensed as a liability insurance company by a State and authorized to operate according to the laws of that State.
 - Whose name includes the term, “Risk Retention Group”.
 - Which does not exclude members for the sole purpose of giving other members a competitive advantage.
 - Which has as multiple owners only those persons who are group members and who obtain eligible insurance coverage through the group; OR which has as sole owner any organization that meets the multiple ownership test.
- “Purchasing Group” means any group which:
 - Is comprised of members who are exposed to similar liability risks due to their business activities or operations.
 - Has as one of its purposes the purchase of liability insurance on a group basis.
 - Buys group liability insurance only for eligible members, and
 - Is domiciled in any State.
- “State” means any State of the U.S. including D.C.
- “Hazardous Financial Condition” means that on the basis of current or reasonably foreseeable financial conditions, a Risk Retention Group is unlikely to be able to pay known or reasonable anticipated claim, or pay other normal business expenses.

The Act’s definitions of “liability”, “personal risk liability” and “insurance” do not effect either the law or insurance interpretations in any State.

Section 3. provides that Risk Retention Groups are exempt from any State law, rule, regulation or order that:

- Outlaws or regulates Risk Retention Groups directly or indirectly;
- Requires or permits a Risk Retention Group to join in any insurance insolvency guaranty association to which other insurers licensed in the State are required to belong;

- Requires countersignature of Risk Retention Group policies by a resident agent or broker;
- Otherwise discriminates against a Risk Retention Group and its members, provided all other corporate laws are obeyed.

BUT the chartering State may regulate the group's formation and operation AND it may require that the Risk Retention Group:

- Register with the State Insurance Department and designate it as agent for the service of process.
- Pay the same premium and other State taxes levied on similar insurers, reinsurers, brokers or policy— holders.
- Participate in “mechanisms” (such as Assigned Risk Plans and Joint Underwriting Associations) prescribed by State law for liability insurers to the same extent as other insurers in the State. (But this does not include insolvency guaranty funds).
- Submit to financial examinations by the insurance authorities of any State in which the group does business, if the home State Insurance Department has begun or has refused to begin an examination.
- Comply with applicable claim settlement practices.
- Comply with lawful orders in connection with any delinquency or voluntary dissolution proceeding.
- Comply with any State laws regarding deceptive, false or fraudulent acts or practices and comply with lawfully obtained injunctions pursuant to such laws.
- Comply with lawful injunctions issued as the result of allegations by State insurance authorities that the group is in “hazardous financial condition” or financially impaired.
- Print on all policies issued in 10-point type 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”.

All these exemptions apply only to the provision of liability insurance and to insurance related services, management operations, investment activities, loss control and claims administration.

A State may require that a person acting as an agent or broker for a Risk Retention Group be licensed in the State, provided there is no discrimination against non-resident agents and brokers.

After it is licensed by a State, and prior to offering insurance, every Risk Retention Group must submit to its home State insurance authorities an operating plan or feasibility study which spells out coverages, limits, deductibles, rates and classifications systems for each kind of insurance offered. The group must submit revisions of such plans when additional lines are added.

Every Risk Retention Group must submit to the insurance authorities of each other State in which it intends to do business:

- Prior to offering insurance in that State, a copy of the plan(s) filed with the home State, and copies of any revisions.
- Annually, a copy of the group's annual statement as submitted to the authorities in the home State, such statement to be audited and certified by an independent public accountant with an opinion on loss and expense reserves provided by a qualified actuary or loss reserve specialist.

All other things considered, any federal or State court of competent jurisdiction may enjoin:

- Risk Retention Group sales to ineligible members.
- Any sales by Risk Retention Groups which are in "hazardous financial condition" or financially impaired.
- Actions by a Risk Retention Group which are n exempt from State law.

States may (or may not) regulate or prohibit ownership of Risk Retention Groups by insurance companies licensed in their jurisdictions, except where the insurer is an owner/member of a Risk Retention Group comprised of insurance companies.

Section 4. deals with Purchasing Groups. These are also exempted from any State law, rule, regulations or order that:

- Prohibits these kinds of groups.
- Prohibits a Purchasing Group or its members from buying insurance on a group basis.
- Prohibits insurers from offering or providing insurance on a group basis - with rate and coverage allowances based on the group's loss and expense experience.
- Prohibits such purchases on account of members not being participants for a predetermined or minimum length of time, or on account of requirements of minimum numbers of members, common ownership or organizational form; or that a minimum percentage of the group must buy insurance for the group to qualify.
- Requires insurance policies to be countersigned by a licensed resident agent or broker.
- Otherwise discriminates against the Purchasing Group or any of its members.

The exemptions apply only to liability insurance and to the same ancillary services or operations as apply in the case of a Risk Retention Group.

A Purchasing Group must notify the Insurance Commissioner of each State in which it intends to do business and specify:

- Its State of domicile and principal place of business.
- The kinds and classifications of liability insurance the group intends to purchase.
- * The name and domicile of the insurance company(s) from whom the group intends to buy coverage.
- * As and when applicable, any subsequent additions or changes.

Purchasing groups must register with and designate the Insurance Commissioner of each State in which it deals as its agent solely for the receipt of service of process EXCEPT, in general, this is not required if a Purchasing Group is domiciled in any State prior to April 1, 1986, and purchases its insurance from an insurance carrier licensed in that State, OR a Purchasing Group which is qualified under the Act before the 1986 amendments.

A Purchasing Group may buy insurance from a Risk Retention Group which is not chartered or an insurance company which is not admitted where the Purchasing Group is located, unless through a licensed agent or broker acting in compliance with the surplus line laws and regulations of the State.

The States otherwise retain the same enforcement powers and powers to go to court as with Risk Retention Groups.

Section 5. deals with the application of securities laws. The ownership interests of members of a Risk Retention Group are:

- EXEMPTED as securities for purposes of Section 5. of the Securities Act of 1933 and Section 12. of the Securities Exchange act of 1934, and
- CONSIDERED TO BE SECURITIES for purposes of Section 17. of the Securities Act of 1933, and Section 10. of the Securities Exchange Act of 1934.
- EXEMPT as an investment company under the Investment Company Act of 1940.
- EXEMPT as securities under any State blue sky laws.

Section 6. clarifies and stresses several areas of State authority:

- There is no exemption from the requirements or provisions of any State's no—fault or motor vehicle financial responsibilities laws.
- "Liability insurance" as defined in the Act is the extent of activity permitted. The Act does not apply to any other lines of insurance.

- Insurance provided by a Risk Retention Group or purchased by a Purchasing Group may not insure risks prohibited by statute or declared unlawful by the highest court of the State involved.
- Provided there is no discrimination vis-a-vis other insurers, any State may impose standards of financial responsibility as a condition of licensing a Risk Retention Group.

Section 7. deals with federal court injunctions. Any district court in the United States may enjoin the solicitation, sales, or operations of a Risk Retention Group in any or all States if it finds the group to be in “hazardous financial condition”.

Section 8. provides for oversight. The Secretary of Commerce must report periodically to Congress concerning the ways in which the Act is fulfilling its purpose.

Two concluding provisions spell out:

- That the feasibility study requirements do not apply to types of insurance defined by the Products Liability Retention Act of 1981 prior to this amendment, where insurance was offered by a Risk Retention Group that has been chartered and operated for at least three years.
- That the Superfund Amendments and Reauthorization Act of 1986 is amended to provide that the powers and authorities of the States under the Risk Retention Amendments of 1986 are in addition to the Superfund provisions.

These, in digested form, are the essential provisions of the Act. In expression it is fairly straightforward.