

## CHAPTER 115

S.B. No. 1148

## AN ACT

relating to the creation, operation, and regulation of risk retention groups and purchasing groups.

*Be it enacted by the Legislature of the State of Texas:*

SECTION 1. Article 21.54, Insurance Code, is amended to read as follows:

*Art. 21.54. RISK RETENTION GROUPS AND PURCHASING GROUPS**Sec. 1. PURPOSE. The purpose of this article 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 Product Liability Risk Retention Act of 1981 (Public Law 97-45) and the federal Liability Risk Retention Act of 1986 and to protect the public by the appropriate regulation of these groups to the extent permitted by law.**Sec. 2. DEFINITIONS. In this article:*

- (1) "Board" means the State Board of Insurance.
- (2) "Commissioner" means the commissioner of insurance of the State of Texas or the commissioner, director, or superintendent of insurance in any other state.
- (3) "Completed operations liability" means liability, including liability for activities that are completed or abandoned before the date of the occurrence giving rise to the liability, arising out of the installation, maintenance, or repair of any product at a site that is not owned or controlled by:
  - (A) a person who performs that work; or
  - (B) a person who hires an independent contractor to perform that work.
- (4) "Insurance" means primary insurance, excess insurance, reinsurance, surplus lines insurance, and any other arrangement for transferring and distributing risk that is determined to be insurance under the law of this state.
- (5) "Product liability" means liability for damages because of any personal injury, death, emotional harm, consequential economic damage, or property damage, including damage 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 such person when the incident giving rise to the claim occurred.
- (6) "Liability":
  - (A) means legal liability for damages, including costs of defense, legal costs, 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, a trade, a product, services, including professional services, premises, or operations; or
    - (ii) any activity of any state or local government or any agency or political subdivision thereof; but
  - (B) 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 et seq.).
- (7) "Personal risk liability" means liability for damages because of injury to any person, damage to property, or other loss or damage resulting from any personal, familial, or household responsibilities or activities rather than responsibilities or activities covered by Subdivision (6) of this section.
- (8) "Plan of operation or feasibility study" means an analysis that presents the expected activities and results of a risk retention group including, at a minimum:

(A) information sufficient to verify that its members are engaged in businesses or activities that are similar or related with respect to the liability to which such members are exposed by virtue of any related, similar, or common business, trade, product, services, premises, or operations;

(B) for each state in which it intends to operate, the coverages, deductibles, coverage limits, rates, and rating classification systems for each line of insurance the group intends to offer;

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

(D) pro forma financial statements and projections;

(E) appropriate opinions by a qualified, independent casualty actuary who is a member in good standing of the American Academy of Actuaries or an individual who is recognized by the commissioner of this state as having comparable training and experience, including a determination of minimum premium or participation levels required to commence operations and to prevent a hazardous financial condition;

(F) identification of management, underwriting and claims procedures, marketing methods, managerial oversight methods, and investment policies; and

(G) other matters as may be prescribed by the insurance laws of the state in which the risk retention group is chartered.

(9) "Purchasing group" means any group that:

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

(B) purchases such insurance only for its group members and only to cover their similar or related liability exposure, as described in Paragraph (C) of this subdivision;

(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, services, premises, or operations; and

(D) is domiciled in any state.

(10) "Risk retention group" means any corporation or other limited liability association:

(A) which is organized for the primary purpose of conducting the activity described under Paragraph (B) of this subdivision;

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

(C) which:

(i) 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) 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 such date, had certified to the commissioner of at least one state that it satisfied the capitalization requirements of that state, except that any such group shall be considered to be a risk retention group only if it has been engaged in business continuously since such date and only for the purpose of continuing to provide insurance to cover product liability or completed operations liability as those terms were defined in the Product Liability Risk Retention Act of 1981 before the effective date of the federal Liability Risk Retention Act of 1986;

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

(E) which:

(i) has as its members only persons who comprise the membership of the risk retention group and who are provided insurance by such group; or

(ii) has as its sole owner an organization which has as its members only persons who comprise the membership of the risk retention group and which has as its owners only persons who comprise the membership of the risk retention group and who are provided insurance by such group;

(F) whose members are engaged in similar or related businesses or activities with respect to the liability to which those members are exposed by virtue of any related, similar, or common business trade, product, services, premises, or operations;

(G) whose activities do not include the provision of insurance other than liability insurance for assuming and spreading all or any portion of the liability of its group members, and reinsurance with respect to the liability of any other risk retention group, or any members of such other group, which is engaged in businesses or activities so that the group or member meets the requirement of Subdivision (6) of this section for membership in the risk retention group which provides the reinsurance; and

(H) the name of which includes the phrase "Risk Retention Group".

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

(12) "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.

(13) "Agent" includes the terms "agent" and "broker" as used in the federal Liability Risk Retention Act of 1986.

(14) "Located" or "location," for the purposes of determining the state in which a purchasing group is located, means the state in which the highest aggregate premiums are in force on the date the group policy is written or renewed and shall be ascertained upon each placement of renewal by the purchasing group of insurance with an insurer or risk retention group. For the purpose of determining the purchasing group's location, the group policy shall be deemed to be renewed annually.

Sec. 3. RISK RETENTION GROUPS CHARTERED IN THIS STATE. (a) Except as otherwise provided by this article, a risk retention group seeking to be chartered in this state must:

(1) be chartered and licensed as an insurance company authorized by Chapters 2 and 8 of this code; and

(2) comply with all of the laws, rules, regulations, and requirements applicable to insurers chartered and licensed under those chapters and with Section 4 of this article to the extent such requirements are not a limitation on laws, rules, regulations, or requirements of this state.

(b) Before it may offer insurance in any state, each risk retention group also must submit for approval to the commissioner of this state a plan of operation or a feasibility study. The risk retention group shall not offer any additional lines of insurance in this state or in any other state or effect any change in its operations as described in its plan of operation before a revision of the plan is submitted to and approved by the commissioner.

(c) The provisions of Subsection (b) of this section relating to the submission of a plan of operation or feasibility study shall not apply with respect to any kind or classification of liability insurance which:

(1) was defined in the federal Product Liability Risk Retention Act of 1981 (Public Law 97-45) before October 27, 1986; and

(2) was offered before such date by any risk retention group which had been chartered and operating for not less than three years before such date.

(d) With its application for charter, a risk retention group seeking to be chartered in this state shall provide to the commissioner of this state, in accordance with rules adopted by the board, the following:

- (1) the name of the risk retention group;
- (2) the identity of the initial members of the group;
- (3) the identity of those individuals who organized the group or who will provide administrative services or otherwise influence or control the activities of the group;
- (4) the amount and nature of initial capitalization;
- (5) the coverages to be afforded; and
- (6) the states in which the group intends to operate.

(e) Immediately on receipt of an application for charter, the commissioner of this state shall provide summary information concerning the filing to the National Association of Insurance Commissioners, including the information furnished pursuant to Subsection (d) of this section.

(f) In addition to all other fees imposed on an insurance company chartered and licensed pursuant to Chapters 2 and 8 of this code, the risk retention group shall pay a filing fee not to exceed \$1,000 as established by board regulation for expenses incurred by the board in connection with Subsections (b), (d), and (e) of this section. Fees collected under this section shall be deposited in the State Treasury to the credit of the State Board of Insurance operating fund.

**Sec. 4. RISK RETENTION GROUPS NOT CHARTERED IN THIS STATE.** (a) A risk retention group chartered and licensed in another state, Bermuda, or the Cayman Islands and seeking to do business as a risk retention group in this state must comply with this section.

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

(1) a statement identifying the state or states in which the risk retention group is chartered and licensed as a liability insurance company, date of chartering, its principal place of business, and such other information, including information on its membership, as the commissioner of this state may require to verify that the group qualifies as a risk retention group under the definition in Subdivision (10) of Section 2 of this article;

(2) a copy of its plan of operation or a feasibility study and revisions of that plan or study submitted to the state in which it is chartered and licensed, provided, however, this provision relating to the submission of a plan of operation or feasibility study shall not apply with respect to any line or classification of liability insurance which:

(A) was defined in the Product Liability Risk Retention Act of 1981 before October 27, 1986; and

(B) was offered before such date by any risk retention group which had been chartered and operating for not less than three years before that date; and

(3) a statement of registration that designates the commissioner as its agent for the purpose of receiving service of legal documents or process and that states the risk retention group will remit to the board a fee not to exceed \$50 as established by board regulation for each document served on the commissioner of this state and forwarded to the risk retention group.

(c) A filing fee not to exceed \$500 as established by board regulation shall be imposed for filing the items under Subdivisions (1) and (2) of Subsection (b) of this section. Fees collected under Subsection (b) shall be deposited in the State Treasury to the credit of the State Board of Insurance operating fund.

(d) Any such risk retention group doing business in this state shall submit to the commissioner of this state:

(1) a copy of the group's financial statement submitted to the state in which the risk retention group is chartered and licensed, which shall be certified by an indepen-

dent 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 a qualified loss reserve specialist, under criteria established by the National Association of Insurance Commissioners;

(2) a copy of each examination of the risk retention group as certified by the commissioner or public official conducting the examination;

(3) on request by the commissioner of this state, a copy of any audit performed with respect to the risk retention group; and

(4) such information as may be required to verify its continuing qualification under the definition of risk retention group in Subdivision (10) of Section 2 of this article.

(e) A filing fee not to exceed \$500 as established by board regulation may be imposed for the filing of the financial statement under Subdivision (1) of Subsection (d) of this section. Fees collected for filing the statement shall be deposited in the State Treasury to the credit of the State Board of Insurance operating fund.

(f) Such risk retention group shall be liable for the payment of premium and maintenance taxes and taxes on premiums of direct business for risks located within this state and shall report to the commissioner of this state the net premiums written for risks located within this state. Such risk retention group shall be subject to taxation, and any applicable fines and penalties related thereto, on the same basis as a foreign admitted insurer pursuant to Chapters 4 and 5 of this code.

(g) A risk retention group and its agents and representatives shall comply with Article 21.21-2 of this code.

(h) A risk retention group shall comply with the laws of this state relating to deceptive, false, or fraudulent acts or practices, including Articles 21.21 and 21.21-A of this code.

(i) A risk retention group must submit to an examination by the commissioner of this state to determine its financial condition if the commissioner of the jurisdiction in which the group is chartered and licensed has not initiated an examination or does not initiate an examination within 60 days after the date the request is made by the commissioner of this state. Any such examination shall be coordinated to avoid unjustified repetition and conducted in an expeditious manner in accordance with the National Association of Insurance Commissioners Examiner Handbook and pursuant to Articles 1.15, 1.16, 1.17, 1.18, 1.19, and 1.28 of this code.

(j) A risk retention group not chartered in this state and doing business in this state must comply with a lawful order issued in a voluntary dissolution proceeding or in a delinquency proceeding commenced by a commissioner if there has been a finding of financial impairment after an examination under Subsection (i) of this section.

(k) A risk retention group not chartered in this state must comply with the terms of an injunction issued by a court of competent jurisdiction of this state or any other state based upon a finding that such group is in hazardous financial condition or is financially impaired.

(l) Any risk retention group which was doing business in this state prior to the enactment of this article shall, within 30 days after the effective date of this article, furnish notice to the commissioner of this state pursuant to the provisions of Subsection (b) of this section and shall thereafter comply with all other provisions pertaining to risk retention groups not chartered in this state as provided by this article.

(m) A risk retention group which violates any provision of this article shall be subject to fines and penalties applicable to foreign admitted insurers generally, including revocation of its right to do business in this state.

**Sec. 5. RISK RETENTION GROUPS; NOTICE, PROHIBITED SOLICITATION AND OWNERSHIP.** (a) Any policy issued by a risk retention group shall 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.*

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

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

*(2) 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.*

*(c) A risk retention group shall not do business in this state if an insurance company 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 insurance companies.*

*(d) A risk retention group may engage in the business of insurance in this state only as such a group and only for conducting the activities described in this article.*

*Sec. 6. PURCHASING GROUPS: EXEMPTION FROM CERTAIN LAWS RELATING TO GROUP PURCHASE OF INSURANCE. Any purchasing group meeting the criteria established under the federal Liability Risk Retention Act of 1986 shall be exempt from any law of this state relating to the creation of groups for the purchase of insurance, the requirement of countersignatures, or the prohibition of group purchasing or any law that would discriminate against a purchasing group or its members. Also, an insurer shall be exempt from any law of this state that prohibits providing or offering to provide to a purchasing group or its members advantages based on their loss and expense experience not afforded to other persons with respect to rates, policy forms, coverages, or other matters. A purchasing group shall be subject to all other applicable laws of this state.*

*Sec. 7. NOTICE AND REGISTRATION REQUIREMENTS OF PURCHASING GROUPS. (a) A purchasing group that intends to do business in this state shall, prior to doing such business, furnish notice to the commissioner of this state. A filing fee not to exceed \$100 as established by board regulation shall be imposed for the filing of such notice. Fees collected under this subsection shall be deposited in the State Treasury to the credit of the State Board of Insurance operating fund. The notice shall:*

*(1) identify the state in which the group is domiciled;*

*(2) specify the lines and classifications of liability insurance that the purchasing group intends to purchase;*

*(3) specify the method by which and the person or persons, if any, through whom insurance will be offered to its members whose risks are located in this state;*

*(4) identify the insurance company from which the group intends to purchase its insurance and the domicile of that company;*

*(5) identify the principal place of business of the group and, if ascertainable at the time of filing, the location of the group; and*

*(6) provide such other information as may be required by the commissioner of this state to verify that the purchasing group is qualified under Subdivision (9) of Section 2 of this article.*

*(b) The purchasing group shall register with and designate the commissioner of this state or other appropriate authority as its agent solely for the purpose of receiving service of legal documents or process, except that these requirements do not apply in the case of a purchasing group which:*

*(1) was domiciled before April 1, 1986, in any state of the United States and is domiciled on and after October 27, 1986, in any state of the United States;*

(2) before October 27, 1986, purchased its insurance from an insurance carrier licensed in any state and since October 27, 1986, purchased its insurance from an insurance carrier licensed in any state;

(3) was a purchasing group under the requirements of the Product Liability Risk Retention Act of 1981 before October 27, 1986; and

(4) does not purchase insurance that was not authorized for purposes of an exemption under that Act, as effective before October 27, 1986.

A fee not to exceed \$50 as established by board regulation may be imposed for each document served on the commissioner of this state and forwarded to the purchasing group. Fees collected under this subsection shall be deposited in the State Treasury to the credit of the State Board of Insurance operating fund.

(c) Any purchasing group which was doing business in this state prior to the enactment of this article shall, within 30 days after the effective date of this article, furnish notice to the commissioner pursuant to the provisions of Subsection (a) of this section such information as may be required pursuant to Subsection (b) of this section.

**Sec. 8. RESTRICTIONS ON INSURANCE PURCHASED BY PURCHASING GROUPS.** (a) A purchasing group located in this state shall not purchase liability insurance from a risk retention group that is not chartered in a state or from an insurer that does not hold a certificate of authority to do the business of insurance in the state in which the purchasing group is located, unless the purchase is effected through a licensed agent acting pursuant to Article 1.14-2 of this code.

(b) A purchasing group which obtains liability insurance from an insurer or a risk retention group shall inform each of the members of such group which have a risk located in this state that such risk is not protected by an insurance insolvency guaranty fund in this state and that such risk retention group or such insurer may not be subject to all insurance laws and regulations of this state.

(c) No purchasing group may offer insurance policy coverage declared unlawful by the highest court of this state.

**Sec. 9. TAXATION OF PREMIUMS PAID BY PURCHASING GROUPS.** (a) Premiums paid for coverage of risks located in this state by purchasing groups or any members of the purchasing group are subject to taxation at the same rate and subject to the same interest, fines, and penalties for nonpayment as that applicable to premiums paid for similar coverage by other insureds.

(b) Chapter 4 of this code shall be used to calculate applicable tax rates when the purchasing group or any members of the purchasing group pay premiums for coverage of risks located in this state to an insurance company holding a certificate of authority to do the business of insurance in this state or a risk retention group qualified to do business in this state. Article 1.14-2 of this code is to be used to calculate the applicable tax rates when the purchasing group or any members of the purchasing group pay premiums for coverage of risks located in this state to a surplus lines insurance carrier.

(c) To the extent that the purchasing group or its members pay premiums for coverage of risks located within this state to an insurance company holding a certificate of authority to do the business of insurance in this state or a risk retention group qualified to do business in this state, the insurance company or risk retention group receiving those premiums is responsible for remitting the tax to the board.

(d) To the extent that the purchasing group or its members pay premiums for coverage of risks located within this state to a surplus lines insurance carrier, the surplus lines agent shall report and pay the taxes for premiums. To the extent the surplus lines agent does not remit the tax, the purchasing group shall pay the tax for coverage of risks located in this state.

**Sec. 10. DUTY OF AGENTS.** (a) No person, firm, partnership, or corporation shall act or offer to act as an agent for a risk retention group, or aid in any manner in the solicitation, negotiation, or placement of insurance on behalf of a risk retention group operating in this state or any of its members in this state without first

obtaining a license as an agent under Article 21.14 of this code in the case of a resident of this state or Article 21.11 of this code in the case of a nonresident of this state.

(b) No person, firm, partnership, or corporation shall act or offer to act as an agent for a purchasing group or aid in any manner in the solicitation, negotiation, or placement of insurance on behalf of a purchasing group operating in this state or any of its members in this state without first obtaining a license as an agent pursuant to Article 21.14 of this code in the case of a resident of this state or Article 21.11 of this code in the case of a nonresident of this state. Furthermore, no person, firm, partnership, or corporation shall act or offer to act as an agent or aid in any manner in the solicitation, negotiation, or placement of insurance with an insurer not qualified to do business in this state on behalf of a purchasing group or its members located in this state without first complying with Article 1.14-2 of this code. No person, firm, partnership, or corporation shall solicit members of the purchasing group for coverage under the purchasing group's policy without first obtaining proper licensing to act as an insurance agent.

(c) Any provision of Article 1.14-2, 21.09, or 21.11 of this code, requiring residency in this state, requiring countersignatures, prohibiting the payment of commissions to a nonresident, prohibiting the solicitation of insurance in this state by a nonresident, or prohibiting a nonresident from acting as a surplus or excess lines agent shall not apply in the case of an agent licensed pursuant to those articles when the agent acts on behalf of a risk retention group or purchasing group operating in this state or any of their members in this state in the provision or placement of liability insurance for risks located in this state.

(d) Before placing business with a risk retention group, each agent shall secure from the appropriate insurance regulatory authority a certified copy of the certificate of authority verifying that the insurer is authorized in its domiciliary jurisdiction to write the liability insurance policy proposed to be procured from it by the agent.

(e) An agent licensed as provided by Subsection (a) or (b) of this section must report to the commissioner of this state not later than March 1 of each year the activities and scope of services being provided to the risk retention group or purchasing group in accordance with rules promulgated by the board.

(f) Every person, firm, partnership, or corporation licensed pursuant to the provisions of Article 1.14-2, 21.11, or 21.14 of this code on business placed with risk retention groups or written through a purchasing group shall inform each prospective insured of the provisions of the notice required by Subsection (a) of Section 5 of this article in the case of a risk retention group and Subsection (b) of Section 8 of this article in the case of a purchasing group.

**Sec. 11. COMPULSORY ASSOCIATIONS.** (a) No risk retention group shall be required or permitted to join or contribute financially to any insurance insolvency guaranty fund or similar mechanism in this state, nor shall a risk retention group or its insureds or claimants against its insureds receive any benefit from such fund for claims arising under the insurance policies issued by such retention group.

(b) No claim against a purchasing group or its members shall be entitled to payment from any insurance insolvency guaranty fund or similar mechanism in this state, nor shall a purchasing group or its members or claimants against the group or its members receive any benefit from such fund for claims arising under the insurance policies procured through the purchasing group.

(c) A risk retention group chartered and licensed in this state and a risk retention group qualified to do business in this state must participate in the catastrophe property insurance pool, joint underwriting associations, mandatory liability and assigned risk pools, and residual market facilities on the same basis as a liability insurer holding a certificate of authority to do the business of insurance in this state.

**Sec. 12. ADMINISTRATIVE AND PROCEDURAL AUTHORITY REGARDING RISK RETENTION GROUPS AND PURCHASING GROUPS.** (a) The commissioner of this state is authorized to make use of any of the powers under this code to enforce the laws of this state so long as those powers are not specifically preempted by the Product



*Liability Risk Retention Act of 1981, as amended by the Liability Risk Retention Act of 1986. These powers include the commissioner's administrative authority to investigate, issue subpoenas, conduct depositions and hearings, issue orders, and impose penalties.*

(b) *With regard to any investigation, administrative proceedings, or litigation, the commissioner of this state shall rely on the procedural law and regulations of the state.*

(c) *Injunctive relief must be issued by a court of competent jurisdiction when the board seeks to enjoin a risk retention group not chartered in this state from:*

(1) *violating the law of this state prohibiting deceptive, false, or fraudulent acts or practices;*

(2) *soliciting or selling insurance to a person who is not eligible for membership in the risk retention group; or*

(3) *soliciting or selling insurance by or operation of a risk retention group that is in hazardous financial condition or is financially impaired.*

*Sec. 13. PENALTIES. (a) A risk retention group that is qualified to do business in this state under Section 3 or 4 of this article and that violates this article is subject to all sanctions and penalties applicable to an insurer that holds a certificate of authority under Chapters 2 and 8 of this code including revocation of its license and the right to do business in this state.*

(b) *A risk retention group doing business in this state that is not qualified to do business in this state under Section 3 or 4 of this article is considered an unauthorized insurer and is subject to Articles 1.14, 1.14-1, 21.28, and 21.28-A of this code.*

*Sec. 14. BINDING EFFECT OF ORDERS ISSUED IN U.S. 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, in all states, or in any territory or possession of the United States on a finding that the group is in a hazardous financial condition, is financially impaired, or is insolvent is enforceable in the courts of this state.*

*Sec. 15. RULES. The board may adopt rules relating to risk retention groups and purchasing groups that are necessary to carry out this article.*

~~[Art. 21.54. PRODUCT LIABILITY RISK RETENTION GROUPS~~

~~[Sec. 1. PURPOSE. The purpose of this article is to regulate the formation and operation of risk retention groups in this state formed under the provisions of the federal Product Liability Risk Retention Act of 1981 (Public Law 97-45) and to protect the public by the appropriate regulation of these risk retention groups.~~

~~[Sec. 2. DEFINITIONS. In this article:~~

~~(1) "Board" means the State Board of Insurance.~~

~~(2) "Commissioner" means the commissioner of insurance of the State of Texas.~~

~~(3) "Insurance commissioner" means the commissioner, director, or superintendent of insurance in any other state.~~

~~(4) "Completed operations liability" means liability, including liability for activities that are completed or abandoned before the date of the occurrence giving rise to the liability, arising out of the installation, maintenance, or repair of any product at a site that is not owned or controlled by:~~

~~(A) a person who performs that work; or~~

~~(B) a person who hires an independent contractor to perform that work.~~

~~(5) "Insurance" means primary insurance, excess insurance, reinsurance, surplus lines insurance, and any other arrangement for shifting and distributing risk that is determined to be insurance under the law of this state.~~

~~(6) "Product liability" means the liability for personal injury or property damage that arises from the manufacture, design, import, distribution, packaging, labeling, lease, or sale of a product as defined by the law of this state.~~

~~[(7) "Risk retention group" means a corporation or other limited liability association taxable as a corporation or as an insurance company formed under this article;~~

~~[(A) that is organized for the primary purpose of assuming and spreading the product liability or completed operations liability risk exposure of its members;~~

~~[(B) whose primary activity consists of assuming and spreading all or any part of the product liability or completed operations liability risk exposure of its group members; and~~

~~[(C) that is composed of members each of whose principal activity consists of the manufacture, design, import, distribution, packaging, labeling, lease, or sale of a product.~~

~~[(8) "Service provider" means a person providing insurance-related services or management services to or for a risk retention group, including an agent, claims appraiser or adjuster, insurer, actuary, or financial or management consultant.~~

~~[(9) "Another state" means the District of Columbia or any state of the United States.~~

~~[Sec. 3. RISK RETENTION GROUPS CHARTERED IN THIS STATE. (a) A person or entity may not engage in business as a risk retention group unless the person or entity has complied with this article.~~

~~[(b) Except as required by this article, a risk retention group seeking to be chartered in this state must be chartered and licensed as an insurance company authorized by Chapters 2 and 8 of this code and must comply with all of the laws, rules, regulations, and requirements applicable to insurers chartered and licensed under those chapters.~~

~~[Sec. 4. RISK RETENTION GROUPS NOT CHARTERED IN THIS STATE. (a) A risk retention group chartered in another state, Bermuda, or the Cayman Islands and seeking to do business as a risk retention group in this state must:~~

~~[(1) register with the commissioner;~~

~~[(2) designate the commissioner as its agent for service of process and receipt of legal documents;~~

~~[(3) file with the commissioner not later than March 1 of each year its annual statement as filed with the insurance commissioner of another state in which it is chartered;~~

~~[(4) file with the commissioner a copy of the last examination, if any, made of the risk retention group, certified by the insurance commissioner of another state in which it is chartered;~~

~~[(5) file with the commissioner not later than March 1 of each year a product liability loss experience data report;~~

~~[(6) file with the commissioner not more than 30 days after filing with the insurance commissioner of another state in which it is chartered or of another state conducting any examination or investigation of its financial condition or impairment a copy of each and every document filed by it in connection with the examination or investigation; and~~

~~[(7) file with the commissioner not more than 30 days after filing with the commissioner of another state in which it is chartered any document concerning its financial condition.~~

~~[(b) A risk retention group chartered in Bermuda or the Cayman Islands, in addition to the requirements of Subsection (a) of this section, must:~~

~~[(1) be chartered or licensed and authorized to do business under the laws of Bermuda or the Cayman Islands before January 1, 1985;~~

~~[(2) file with the commissioner a copy of the certification filed with the insurance commissioner of at least one other state, or the District of Columbia, showing that it satisfies the capitalization requirements of the district or of that state, together with evidence that the certification has been accepted by the insurance commissioner of the district or of that state as meeting the requirements of the district or of that state; and~~

~~[(3) file with the insurance commissioner of another state in which it certifies its capitalization a waiver of any seceery laws of the jurisdiction in which it is chartered.~~

~~[Sec. 5. AGENTS. (a) A person who is a resident of this state, who is acting or offering to act as an agent for a risk retention group, and whose activities include the~~

solicitation, negotiation, or placement of insurance on behalf of a risk retention group operating in this state, or any of its members in this state, must obtain a license as an agent under Article 21.14 of this code.

~~[(b) An agent licensed by another state and residing outside of this state may act as an agent for a risk retention group operating in this state, or any of its members in this state, in the same manner as a resident agent on obtaining a license under the provisions of Article 21.14 of this code relating to licensing of nonresident agents.~~

~~[(c) An agent licensed as provided by Subsection (a) or (b) of this section must report to the commissioner not later than March 1 of each year the activities and scope of services being provided to the risk retention group.~~

~~[(d) Before placing business with a risk retention group, each agent shall secure from the appropriate insurance regulatory authority a certified copy of the certificate of authority verifying that the insurer is authorized in its domiciliary jurisdiction to write the product liability or completed operations insurance policy proposed to be procured from it by the agent.~~

~~[(e) Every policy or contract of insurance placed by an agent with a risk retention group chartered or licensed in this state shall have printed on its face in not less than 10-point bold red type the following statement:~~

~~["THE INSURANCE HEREBY EVIDENCED IS WRITTEN BY A RISK RETENTION GROUP LICENSED IN THE STATE OF TEXAS, BUT IN THE EVENT OF INSOLVENCY, THIS RISK RETENTION GROUP IS NOT PROTECTED BY ANY GUARANTY FUND IN THE STATE OF TEXAS."]~~

~~[(f) Each policy or contract of insurance placed by an agent with a risk retention group not chartered or licensed in this state shall have printed on its face in not less than 10-point bold red type, the following statement:~~

~~["THE INSURANCE HEREBY EVIDENCED IS WRITTEN BY A RISK RETENTION GROUP NOT LICENSED BY THE STATE OF TEXAS, NOT SUBJECT TO ITS SUPERVISION, AND NOT PROTECTED, IN THE EVENT OF THE INSOLVENCY, BY ANY GUARANTY FUND IN THE STATE OF TEXAS."]~~

~~[Sec. 6. OTHER SERVICE PROVIDERS. (a) A service provider that is not a licensed agent must:~~

~~[(1) register with the commissioner; and~~

~~[(2) report, not later than March 1 of each year in which any activities or services are provided, the activities and scope of services that it is providing to the risk retention group.~~

~~[(b) This section may not be construed to allow service providers whose activities otherwise require licensing in another state to act on behalf of a risk retention group without such a license.~~

~~[Sec. 7. TAXES. (a) The tax provided by Article 4.10 of this code is imposed on each risk retention group.~~

~~[(b) A risk retention group is subject to taxation under and is considered to be an insurer for the purpose of assessing and collecting taxes as provided by Article 4.10 of this code.~~

~~[(c) An agent shall report and pay the taxes on the premiums for risks that he has placed with or on behalf of a risk retention group that is not chartered in this state as provided by Article 1.14-2 of this code.~~

~~[Sec. 8. RESTRICTIONS. A risk retention group may not:~~

~~[(1) insure risks other than those of its member companies;~~

~~[(2) provide an insurance or insurance-related service other than for product liability or completed operations unless the risk retention group obtains a certificate of authority in this state and becomes subject to all the laws and regulations of this state with respect to those additional lines of insurance and related services; or~~

~~[(3) exclude any person from membership in the group solely to provide for members of the group a competitive advantage over the person.~~

~~[Sec. 9. EXEMPTION FROM COMPULSORY ASSOCIATIONS. A risk retention group, with respect to its product liability or completed operations insurance, may not be a member of or contribute financially to any insurance insolvency guaranty fund or similar mechanism in this state, nor may a risk retention group or its insured receive any benefit from any guaranty fund or similar mechanism for claims arising out of the operations of the risk retention group for product liability or completed operations insurance.~~

~~[Sec. 10. COUNTERSIGNATURES NOT REQUIRED. A policy or contract of insurance issued to a risk retention group or any member of that group is not required to be countersigned as provided by Article 21.14 of this code.~~

~~[Sec. 11. UNFAIR CLAIMS SETTLEMENT PRACTICES. A risk retention group doing business in this state is subject to Article 21.21-2 of this code.~~

~~[Sec. 12. EXAMINATION FOR FINANCIAL IMPAIRMENT. (a) A risk retention group chartered in this state must submit to examination to determine its financial condition as considered necessary by the commissioner. The examination shall be conducted in accordance with the laws, rules, regulations, and procedures applicable to insurers licensed in this state under Articles 1.15, 1.16, and 1.19 of this code.~~

~~(b) A risk retention group that is not chartered in this state but is doing business in this state must submit to the same type of examination as if it were chartered in this state if:~~

~~(1) the commissioner has reason to believe the risk retention group is or may be in a hazardous financial condition; and~~

~~(2) the insurance commissioner of another state in which the group is chartered has not begun or has refused to initiate an examination of the group comparable in scope to an examination by this state.~~

~~[Sec. 13. DELINQUENCY PROCEEDINGS. (a) A risk retention group chartered and licensed in this state is subject to Article 21.28-A of this code and must comply with all lawful orders issued in any delinquency proceeding commenced by the commissioner.~~

~~(b) A risk retention group not chartered in this state but doing business in this state is subject to Article 21.28-A of this code and must comply with a lawful order issued in any delinquency proceeding commenced by the commissioner relating to its operations and financial affairs in this state.~~

~~[Sec. 14. PENALTIES. (a) A risk retention group that is chartered and licensed under Section 3 or 4 of this article and that violates this article is subject to all sanctions and penalties applicable to an insurer that holds a certificate of authority under Chapters 2 and 8 of this code including revocation of its license and the right to do business in this state.~~

~~(b) A risk retention group doing business in this state that is not chartered or licensed under Section 3 or 4 of this article is considered an unauthorized insurer and is subject to Articles 1.14, 1.14-1, 21.28, and 21.28-A of this code.~~

~~[Sec. 15. RULES. The board may adopt rules relating to risk retention groups that are necessary to carry out this article.]~~

SECTION 2. Subdivision (1), Subsection (a), Section 2, Article 1.14-2, Insurance Code, is amended to read as follows:

(1) "Surplus lines agent" (i) is an agent authorized under Article 21.14 who is granted a surplus lines license in accordance with this Article, [or] (ii) is a managing general agent (authorized to be licensed and licensed under the Managing General Agents' Licensing Act, Acts, 1967, 60th Legislature, Chapter 727, codified by Vernon as Article 21.07-3) who is granted a surplus lines license in accordance with this Article and who complies with the provisions of this Article, except it is not necessary that the managing general agent be licensed as a recording agent, or (iii) is a nonresident insurance agent authorized under Article 21.11 and who is granted a surplus lines license for the limited purpose of acting on behalf of a purchasing group operating in this state in the placement of liability insurance for risks located in this state.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed the Senate on April 28, 1987, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendment on May 7, 1987, by the following vote: Yeas 31, Nays 0. Passed the House, with amendment, on May 6, 1987, by the following votes on a division of the question: Section 1 passed by the following vote: Yeas 144, Nays 0, one present not voting; the remainder of the bill passed by the following vote: Yeas 134, Nays 0, two present not voting.

Approved May 19, 1987.

Effective May 19, 1987.