

CHAPTER 60E

RISK RETENTION GROUPS

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60E.01 PURPOSE.

The purpose of sections 60E.01 to 60E.14 is to regulate the formation and operation of risk retention groups in this state formed under the federal Liability Risk Retention Act of 1986.

History: 1987 c 192 s 1

60E.02 DEFINITIONS.

Subdivision 1. **Scope.** For the purposes of sections 60E.01 to 60E.14, the terms defined in this section have the meanings given them.

Subd. 2. **Commissioner.** "Commissioner" means the commissioner of commerce in Minnesota or the commissioner, director, or superintendent of insurance in any other state.

Subd. 3. **Completed operations liability.** "Completed operations liability" means liability arising out of the installation, maintenance, or repair of a product at a site which is not owned or controlled by a person who performs that work; or a person who hires an independent contractor to perform that work; but includes liability for activities which are completed or abandoned before the date of the occurrence giving rise to the liability.

Subd. 4. **Domicile.** "Domicile," for purposes of determining the state in which a purchasing group is domiciled, means for a corporation, the state in which the purchasing group is incorporated; and for an unincorporated entity, the state of its principal place of business.

Subd. 5. **Hazardous financial condition.** "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 meet obligations to policyholders with respect to known claims and reasonably anticipated claims; or to pay other obligations in the normal course of business.

Subd. 6. **Insurance.** "Insurance" means primary insurance, excess insurance, reinsurance, surplus lines insurance, and any other arrangement for shifting and distributing risk which is determined to be insurance under the laws of this state.

Subd. 7. **Liability.** "Liability": (1) 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:

(a) a business (whether profit or nonprofit), trade, product, services (including professional services), premises, or operations; or

(b) an activity of a state or local government, or an agency or political subdivision of a state or local government; and

(2) does not include personal risk liability and an employer's liability with respect to its employees other than legal liability under the Federal Employers' Liability Act, United States Code, title 45, section 51, et seq.

Subd. 8. **Personal risk liability.** "Personal risk liability" means liability for damages because of injury to a 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 subdivision 7.

Subd. 9. **Plan of operation or feasibility study.** "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:

- (1) the coverages, deductibles, coverage limits, rates, and rating classification systems for each line of insurance the group intends to offer;
- (2) historical and expected loss experience of the proposed members and national experience of similar exposures;
- (3) pro forma financial statements and projections;
- (4) 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;
- (5) identification of management, underwriting procedures, managerial oversight methods, investment policies; and
- (6) other matters prescribed by the commissioner for liability insurance companies authorized by the insurance laws of the state.

Subd. 10. **Product liability.** "Product liability" means liability for damages because of 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 a person for those damages if the product involved was in the possession of the person when the incident giving rise to the claim occurred.

Subd. 11. **Purchasing group.** "Purchasing group" means a group that:

- (1) has as one of its purposes the purchase of liability insurance on a group basis;
- (2) purchases the insurance only for its group members and only to cover their similar or related liability exposure, as described in clause (3);
- (3) 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 a related, similar, or common business, trade, product, services, premises, or operations; and
- (4) is domiciled in a state.

Subd. 12. **Risk retention group.** "Risk retention group" means a corporation or other limited liability association formed under the laws of a state, Bermuda, or the Cayman Islands:

- (1) whose primary activity consists of assuming and spreading all, or a portion, of the liability exposure of its group members;
- (2) which is organized for the primary purpose of conducting the activity described under clause (1);
- (3) which:
 - (a) is chartered and licensed as a liability insurance company and authorized to engage in the business of insurance under the laws of a state; or
 - (b) 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 commissioner of at least one state that it satisfied the capitalization requirements of the state, except that the group shall be considered to be a risk retention group only if it has been engaged in business continuously since that date and only for the purpose of continuing to provide insurance to

cover product liability or completed operations liability, as such terms were defined in the Product Liability Risk Retention Act of 1981 before the date of the enactment of the Risk Retention Act of 1986;

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

(5) which:

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

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

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

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

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

(b) reinsurance with respect to the liability of any other risk retention group, or any members of the other group, which is engaged in businesses or activities so that the group or member meets the requirement described in clause (6) from membership in the risk retention group which provides the reinsurance; and

(8) the name of which includes the phrase "risk retention group."

Subd. 13. **State.** "State" means a state of the United States or the District of Columbia.

History: 1987 c 192 s 2

60E.03 RISK RETENTION GROUPS CHARTERED IN THIS STATE.

A risk retention group seeking to be chartered in this state must be chartered and licensed as a liability insurance company authorized by the insurance laws of this state and, except as provided elsewhere in sections 60E.01 to 60E.14, must comply with all of the laws, rules, and requirements applicable to insurers chartered and licensed in this state and with section 60E.04 to the extent those requirements are not a limitation on laws, rules, or requirements of this state. Before it may offer insurance in a state, a risk retention group shall also submit for approval to the commissioner of commerce a plan of operation or a feasibility study and revisions of the plan or study if the group intends to offer additional lines of liability insurance.

History: 1987 c 192 s 3

60E.04 RISK RETENTION GROUPS NOT CHARTERED IN THIS STATE.

Subdivision 1. **Regulation.** Risk retention groups chartered in states 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 set forth in subdivisions 2 to 12.

Subd. 2. **Notice of operations and designation of commissioner as agent.** Before offering insurance in this state, a risk retention group shall submit to the commissioner:

(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 other information including information on its membership, the commissioner may require to verify that the risk retention group is qualified under section 60E.02, subdivision 12;

(2) a copy of its plan of operations or a feasibility study and revisions of the plan or study submitted to its state of domicile; provided, however, that the provision relating to the submission of a plan of operation or a feasibility study shall not apply with respect to a line or classification of liability insurance that was defined in the Product Liability Risk Retention Act of 1981 before October 27, 1986, and was offered

before that date by a risk retention group that 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.

Subd. 3. Financial condition. A risk retention group doing business in this state shall submit to the commissioner:

(1) a copy of the group's financial statement submitted to its state of domicile, which shall 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 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) a copy of an audit performed with respect to the risk retention group; and

(4) the information required to verify its continuing qualification as a risk retention group under section 60E.02, subdivision 12.

Subd. 4. Taxation. (a) All premiums paid for coverages within this state to risk retention groups are subject to taxation at the same rate and subject to the same interest, fines, and penalties for nonpayment as that applicable to other insurers.

(b) To the extent agents or brokers are utilized, they shall report and pay the taxes for the premiums for risks which they have placed with or on behalf of a risk retention group not chartered in this state. The agents or brokers are subject to the provisions of sections 60A.195 to 60A.209.

(c) To the extent agents or brokers are not utilized or fail to pay the tax, each risk retention group shall pay the tax for risks insured within the state. Each risk retention group shall report all premiums paid to it for risks insured within the state and shall be subject to the same interest, fines, and penalties for nonpayment as that applicable to foreign admitted insurers.

Subd. 5. Compliance with unfair claims settlement practices law. A risk retention group, its agents and representatives, shall comply with sections 72A.20, subdivision 12, and 72A.201.

Subd. 6. Deceptive, false, or fraudulent practices. A risk retention group shall comply with sections 72A.17 to 72A.32 regarding deceptive, false, or fraudulent acts or practices. However, if the commissioner seeks an injunction regarding this conduct, the injunction must be obtained from a court of competent jurisdiction.

Subd. 7. Examination regarding financial condition. A risk retention group must submit to an examination by the commissioner to determine its financial condition if the commissioner of the jurisdiction in which the group is chartered has not initiated an examination or does not initiate an examination within 60 days after a request by the commissioner of commerce. The examination must be coordinated to avoid unjustified repetition and conducted in an expeditious manner and in accordance with the National Association of Insurance Commissioner's Examiner Handbook.

Subd. 8. Notice to purchasers. A 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 rules of your state. State insurance insolvency guaranty funds are not available for your risk retention group.

Subd. 9. Prohibited acts regarding solicitation or sale. The following acts by a risk retention group are prohibited:

(1) the solicitation or sale of insurance by a risk retention group to a 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.

Subd. 10. Prohibition on ownership by an insurance company. No risk retention group shall be allowed to 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.

Subd. 11. Prohibited coverage. No risk retention group may offer insurance policy coverage prohibited by the insurance laws or rules of this state or declared unlawful by the highest court of this state.

Subd. 12. Delinquency proceedings. 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 state insurance commissioner if there has been a finding of financial impairment after an examination under section 60E.04, subdivision 7.

History: 1987 c 192 s 4; 1988 c 719 art 2 s 2

60E.05 COMPULSORY ASSOCIATIONS.

No risk retention group shall be permitted to join or contribute financially to an insurance insolvency guaranty fund, or similar mechanism, in this state, nor shall any risk retention group, or its insureds, or claimants against its insureds receive a benefit from the fund for claims arising out of the operations of the risk retention group.

A risk retention group shall participate in this state's joint underwriting associations and mandatory liability pools as provided by chapters 60A to 72A and 340A.

History: 1987 c 192 s 5

60E.06 COUNTERSIGNATURES NOT REQUIRED.

A policy of insurance issued to a risk retention group or a member of that group shall not be required to be countersigned as otherwise provided in chapters 60A to 72A.

History: 1987 c 192 s 6

60E.07 PURCHASING GROUPS; EXEMPTION FROM CERTAIN LAWS RELATING TO THE GROUP PURCHASE OF INSURANCE.

A purchasing group meeting the criteria established under the Federal Liability Risk Retention Act of 1986 is exempt from any law of this state relating to the creation of groups for the purchase of insurance, prohibition of group purchasing or any law that would discriminate against a purchasing group or its members. In addition, an insurer is 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 is subject to all other applicable laws of this state.

History: 1987 c 192 s 7

60E.08 NOTICE AND REGISTRATION REQUIREMENTS OF PURCHASING GROUPS.

Subdivision 1. Notice to commissioner. A purchasing group that intends to do business in this state shall furnish notice to the commissioner which shall:

- (1) identify the state in which the group is domiciled;
- (2) specify the lines and classifications of liability insurance which the purchasing group intends to purchase;
- (3) identify the insurance company from which the group intends to purchase its insurance and the domicile of the company;

- (4) identify the principal place of business of the group; and
- (5) provide other information required by the commissioner to verify that the purchasing group is qualified under section 60E.02, subdivision 11.

Subd. 2. **Service of process.** The purchasing group shall register with and designate the commissioner as its agent solely for the purpose of receiving service of legal documents or process. These requirements do not apply to a purchasing group that:

- (1) was domiciled before April 2, 1986, and is domiciled on and after October 27, 1986, in any state of the United States;
- (2) before October 27, 1986, purchased 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 Retention Act of 1981 before October 27, 1986; and
- (4) does not purchase insurance that was not authorized for purposes of an exemption under the act referred to in clause (3), as in effect before October 27, 1986.

History: 1987 c 192 s 8

60E.09 RESTRICTIONS ON INSURANCE PURCHASED BY PURCHASING GROUPS.

A purchasing group may not purchase insurance from a risk retention group that is not chartered in a state or from an insurer not admitted in the state in which the purchasing group is located, unless the purchase is effected through a licensed agent or broker acting pursuant to the surplus lines laws and regulations of the state.

History: 1987 c 192 s 9

60E.10 ADMINISTRATIVE AND PROCEDURAL AUTHORITY REGARDING RISK RETENTION GROUPS AND PURCHASING GROUPS.

The commissioner of commerce may use any of the powers established under the insurance laws and rules of this state to enforce the laws and rules 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 Risk Retention Amendments of 1986. This includes, but is not limited to, the commissioner's administrative authority to investigate, issue subpoenas, conduct depositions and hearings, issue orders, and impose penalties. With regard to an investigation, administrative proceedings, or litigation, the commissioner can rely on the procedural law and rules of the state. The injunctive authority of the commissioner in regard to risk retention groups is restricted by the requirement that an injunction be issued by a court of competent jurisdiction.

History: 1987 c 192 s 10

60E.11 PENALTIES.

A risk retention group that violates a provision of sections 60E.01 to 60E.14 will be subject to fines and penalties applicable to licensed insurers generally, including revocation of its license and/or the right to do business in this state.

History: 1987 c 192 s 11

60E.12 DUTY ON AGENTS OR BROKERS TO OBTAIN LICENSE.

A person acting, or offering to act, as an agent or broker 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 this activity, obtain a license from the commissioner.

History: 1987 c 192 s 12

60E.13 BINDING EFFECT 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 a state, or in all states or in a territory or possession of the United States, upon a finding that the group is in a hazardous financial condition shall be enforceable in the courts of the state.

History: 1987 c 192 s 13

60E.14 RULES.

The commissioner may adopt rules relating to risk retention groups as may be necessary or desirable to carry out the provisions of sections 60E.01 to 60E.14.

History: 1987 c 192 s 14