

## CHAPTER 60E

## RISK RETENTION GROUPS

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|--|---|
| 60E.01 Purpose.  | 60E.09 Restrictions on insurance purchased by purchasing groups.                                      |
| 60E.02 Definitions.  | 60E.095 Purchasing group taxation.  |
| 60E.03 Risk retention groups chartered in this state.  | 60E.10 Administrative and procedural authority regarding risk retention groups and purchasing groups. |
| 60E.04 Risk retention groups not chartered in this state.  | 60E.12 Duty on agents or brokers to obtain license.   |
| 60E.05 Compulsory associations.  | 60E.13 Binding effect of orders issued in United States district court.                               |
| 60E.06 Countersignatures not required.   | 60E.14 Rules.   |
| 60E.07 Purchasing groups; exemption from certain laws relating to the group purchase of insurance. |   |
| 60E.08 Notice and registration requirements of purchasing groups.                                  |   |

**60E.01 PURPOSE.**

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

**History:** 1987 c 192 s 1; 1993 c 299 s 11

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

(2) 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;

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

(4) pro forma financial statements and projections;

(5) 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;

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

(7) identification of each state in which the risk retention group has obtained, or sought to obtain, a charter and license, and a description of its status in each state; and

(8) 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:

(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 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 that 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; 1993 c 299 s 12,13.

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

A risk retention group shall be chartered and licensed to write only liability insurance pursuant to sections 60E.01 to 60E.14 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.

Notwithstanding any other provision to the contrary, all risk retention groups chartered in this state shall file with the department and the National Association of Insurance Commissioners (NAIC), an annual statement in a form prescribed by the NAIC, and in diskette form if required by the commissioner, and completed in accordance with its instructions and the NAIC accounting practices and procedures manual.

Before it may offer insurance in a state, each risk retention group shall also submit for approval to the commissioner of commerce a plan of operation or feasibility study. The risk retention group shall submit an appropriate revision in the event of any subsequent material change in any item of the plan of operation or feasibility study, within ten days of a change. The group shall not offer any additional kinds of liability insurance, in this state or in any other state, until a revision of the plan or study is approved by the commissioner.

At the time of filing its application for charter, the risk retention group shall provide to the commissioner in summary form the following information: the identity of the initial members of the group, 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, the amount and nature of initial capitalization, the coverages to be afforded, and the states in which the group intends to operate. Upon receipt of this information, the commissioner shall forward the information to the National Association of Insurance Commissioners.

Providing notification to the NAIC is in addition to and shall not be sufficient to satisfy the requirements of section 60E.04 or any other sections of this chapter.

**History:** 1987 c 192 s 3; 1993 c 299 s 14

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

**Subdivision 1. Regulation.** Risk retention groups chartered and licensed 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.** (a) Before offering insurance in this state, a risk retention group shall submit to the commissioner on a form prescribed by the NAIC:

(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 the state in which the risk retention group is chartered and licensed; 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.

(b) The risk retention group shall submit a copy of any revision to its plan of operation or feasibility study required by section 60E.03 at the same time that the revision is submitted to the commissioner of its chartering state.

(c) The risk retention group shall submit a statement of registration, for which a filing fee shall be determined by the commissioner, 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 the state in which the risk retention group is chartered and licensed, 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) upon request by the commissioner, a copy of any information or document pertaining to any outside 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) Each risk retention group is liable for the payment of premium taxes and taxes on premiums of direct business for risks resident or located within this state, and shall report to the commissioner the net premiums written for

risks resident or located within this state. The risk retention group shall be subject to taxation, and any applicable taxation-related fines and penalties, on the same basis as a foreign admitted insurer.

(b) To the extent licensed agents or brokers are utilized pursuant to section 60E.12, they shall report to the commissioner the premiums for direct business for risks resident or located within this state which the licensees have placed with or on behalf of a risk retention group not chartered in this state.

(c) To the extent that insurance agents or brokers are utilized pursuant to section 60E.12, each agent or broker shall keep a complete and separate record of all policies procured from each risk retention group, which shall be open to examination by the commissioner, as provided in section 60A.031. These records shall, for each policy and each kind of insurance provided, include the following:

- (1) the limit of liability;
- (2) the time period covered;
- (3) the effective date;
- (4) the name of the risk retention group which issued the policy;
- (5) the gross premium charged; and
- (6) the amount of return premiums, if any.

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 and licensed 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.** An application form for insurance from a risk retention group and the front and declaration pages of a policy issued by a risk retention group must contain 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 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.** The terms of an insurance policy issued by a risk retention group shall not provide, or be construed to provide, coverage prohibited by

state statute or declared unlawful by the highest court of the state whose law applies to the policy.

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.

Subd. 13. **Penalties.** A risk retention group that violates any provision of this chapter is subject to fines and penalties including revocation of its right to do business in this state, applicable to licensed insurers generally.

**History:** 1987 c 192 s 4; 1988 c 719 art 2 s 2; 1991 c 325 art 21 s 4; 1993 c 299 s 15-22

#### 60E.05 COMPULSORY ASSOCIATIONS.

No risk retention group shall be required or 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.

When a purchasing group obtains insurance covering its members' risks from an insurer not authorized in this state or a risk retention group, no such risks, wherever resident or located, shall be covered by any insurance guaranty fund or similar mechanism in this state.

When a purchasing group obtains insurance covering its members' risks from an authorized insurer, only risks resident or located in this state shall be covered by the Minnesota guaranty association under chapter 60C.

Notwithstanding chapter 62I, the commissioner may require or exempt a risk retention group from participation in any mechanism established or authorized under the law of this state for the equitable apportionment among insurers of liability insurance losses and expenses incurred on policies written through this mechanism, and the risk retention group shall submit sufficient information to the commissioner to enable the commissioner to apportion on a nondiscriminatory basis the risk retention group's proportionate share of these losses and expenses.

**History:** 1987 c 192 s 5; 1993 c 299 s 23

#### 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 and its insurer or insurers are subject to all applicable laws of this state, except that a purchasing group and its insurer or insurers are exempt, in regard to liability insurance for the purchasing group, from any law that would:

- (1) prohibit the establishment of a purchasing group;
- (2) make it unlawful for an insurer to provide or offer to provide insurance on a basis providing, 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;
- (3) prohibit a purchasing group or its members from purchasing insurance on a group basis described in clause (2);
- (4) prohibit a purchasing group from obtaining insurance on a group basis because the group has not been in existence for a minimum period of time or because any member has not belonged to the group for a minimum period of time;

(5) require that a purchasing group must have a minimum number of members, common ownership or affiliation, or certain legal form;

(6) require that a certain percentage of a purchasing group must obtain insurance on a group basis;

(7) otherwise discriminate against a purchasing group or any of its members; or

(8) require that any insurance policy issued to a purchasing group or any of its members be countersigned by an insurance agent or broker residing in this state.

**History:** 1987 c 192 s 7; 1993 c 299 s 24

#### **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, prior to doing business, furnish notice to the commissioner on forms prescribed by the NAIC which shall:

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

(2) identify all other states in which the group intends to do business;

(3) specify the lines and classifications of liability insurance which the purchasing group intends to purchase;

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

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

(6) identify the principal place of business of the group; and

(7) provide other information required by the commissioner to verify that the purchasing group is qualified under section 60E.02, subdivision 11.

Subd. 2. **Notice of change.** A purchasing group shall, within ten days, notify the commissioner of any changes in any items set forth in subdivision 1.

Subd. 3. **Service of process.** The purchasing group shall register with and designate the commissioner or other appropriate authority as its agent solely for the purpose of receiving service of legal documents or process for which a filing fee shall be determined by the commissioner. These requirements do not apply to a purchasing group that only purchases insurance that was authorized under the federal Product Liability Risk Retention Act of 1981, and that in any state of the United States:

(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; and

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

Subd. 4. **Additional information.** Each purchasing group that is required to give notice pursuant to subdivision 1 shall also furnish information required by the commissioner to:

(1) verify that the entity qualifies as a purchasing group;

(2) determine where the purchasing group is located; and

(3) determine appropriate tax treatment.

**History:** 1987 c 192 s 8; 1993 c 299 s 25

#### **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 pur-

chasing 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.

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

No purchasing group may purchase insurance providing for a deductible or self-insured retention applicable to the group as a whole, however, coverage may provide for a deductible or self-insured retention applicable to individual members.

Purchases of insurance by purchasing groups are subject to the same standards regarding aggregate limits which are applicable to all purchases of group insurance.

**History:** 1987 c 192 s 9; 1993 c 299 s 26

#### **60E.095 PURCHASING GROUP TAXATION.**

Premium taxes and taxes on premiums paid for coverage of risks resident or located in this state by a purchasing group or any members of the purchasing groups shall be:

(1) imposed at the same rate and subject to the same interest, fines, and penalties as that applicable to premium taxes and taxes on premiums paid for similar coverage from a similar insurance source by other insureds; and

(2) paid first by the insurance source, and if not by the source by the agent or broker for the purchasing group, and if not by the agent or broker then by the purchasing group, and if not by the purchasing group then by each of its members.

**History:** 1993 c 299 s 27

#### **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 of this state to enforce the laws of this state 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, impose penalties, and seek injunctive relief. With regard to an investigation, administrative proceedings, or litigation, the commissioner can rely on the procedural laws 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; 1993 c 299 s 28

#### **60E.11 [Repealed, 1993 c 299 s 33]**

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

**Subdivision 1. Risk retention groups.** No person, firm, association, or corporation shall act or aid in any manner in soliciting, negotiating, or procuring liability insurance in this state from a risk retention group unless the person, firm, association, or corporation is licensed as an insurance agent or broker in accordance with chapter 60K.

**Subd. 2. Purchasing groups.** (a) No person, firm, association, or corporation shall act or aid in any manner in soliciting, negotiating, or procuring liability insurance in this state for a purchasing group from an authorized insurer or a risk retention group chartered in a state unless the person, firm, association, or corporation is licensed as an insurance agent or broker in accordance with chapter 60K.

(b) No person, firm, association, or corporation shall act or aid in any manner in soliciting, negotiating, or procuring liability insurance coverage in this state for any

member of a purchasing group under a purchasing group's policy unless the person, firm, association, or corporation is licensed as an insurance agent or broker in accordance with chapter 60K.

(c) No person, firm, association, or corporation shall act or aid in any manner in soliciting, negotiating, or procuring liability insurance from an insurer not authorized to do business in this state on behalf of a purchasing group located in this state unless the person, firm, association, or corporation is licensed as a surplus lines agent or excess line broker in accordance with sections 60A.195 to 60A.209.

Subd. 3. **Agent or broker residence requirement.** For purposes of acting as an agent or broker for a risk retention group or purchasing group pursuant to subdivisions 1 and 2, the requirement of residence in this state does not apply.

Subd. 4. **Notice to insureds.** Every person, firm, association, or corporation licensed pursuant to chapter 60A, 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 section 60E.04, subdivision 8, in the case of a risk retention group and section 60E.09 in the case of a purchasing group.

**History:** 1987 c 192 s 12; 1993 c 299 s 29

#### **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 or financially impaired condition shall be enforceable in the courts of the state.

**History:** 1987 c 192 s 13; 1993 c 299 s 30

#### **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