

AN ACT concerning regulation.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

Section 5. The Illinois Insurance Code is amended by changing Sections 123B-2, 123B-3, 123B-4, and 123B-7 as follows:

(215 ILCS 5/123B-2) (from Ch. 73, par. 735B-2)

(Section scheduled to be repealed on January 1, 2017)

Sec. 123B-2. Definitions. As used in this Article:

(1) "Director" means the Director of the Department of Insurance.

(2) "Completed operations liability" means liability arising out of the installation, maintenance, or repair of any product at a site which is not owned or controlled by:

(a) any person who performs that work; or

(b) any person who hires an independent contractor to perform that work; but shall include liability for activities which are completed or abandoned before the date of the occurrence giving rise to the liability.

(3) "Domicile", for purposes of determining the state in which a purchasing group is domiciled, means:

(a) for a corporation, the state in which the purchasing group is incorporated; and

(b) for an unincorporated entity, the state of its principal place of business.

(4) "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:

(a) to meet obligations to policyholders with respect to known claims and reasonably anticipated claims; or

(b) to pay other obligations in the normal course of business.

(5) "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 Illinois.

(6) "Liability" means:

(a) 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 such other persons resulting from or arising out of:

(i) any business (whether for profit or not for profit), trade, 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 and 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 damage 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 from responsibilities or activities referred to in paragraph (a) of subsection (6) of this Section;

(8) "Plan of operation or a feasibility study" means an analysis which 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 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 this experience is reasonably available;

(d) pro forma financial statements and projections;

(e) 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;

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

(f-5) 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 such state; and

(g) such other matters as may be prescribed by the commissioner of the state in which the group is chartered for liability insurance companies authorized by the insurance laws of such state.

(9) "Product liability" means liability for damages because of any 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 any person for those damages if the product involved was in the possession of such a person when the incident giving rise to the claim occurred.

(10) "Purchasing group" means any group which:

(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 subsection (10);

(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.

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

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

(b) which is organized for the primary purpose of conducting the activity described under paragraph (a) of this subsection (11);

(c) which:

(i) is organized 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 organized 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 insurance commissioner of at least one state that it satisfied the capitalization requirements of such 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 purposes 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);

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

(e) which:

(i) has as its owners (directly or indirectly) 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 (directly or indirectly) an organization which:

(I) has as its members only persons who comprise the membership of the risk retention

group; and

(II) 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 businesses or activities similar or related with respect to the liability of which such 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:

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

(ii) 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 such group or member meets the requirement described in paragraph (f) of this subsection (11) for membership in the risk retention group which provides such reinsurance; and

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

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

(13) "NAIC" means the National Association of Insurance

Commissioners.

(Source: P.A. 85-131.)

(215 ILCS 5/123B-3) (from Ch. 73, par. 735B-3)

(Section scheduled to be repealed on January 1, 2017)

Sec. 123B-3. Risk retention groups organized in this State.

A. A risk retention group shall either:

(1) pursuant to the provisions of Articles II or III, be organized to write only liability insurance and, except as provided elsewhere in this Article, must comply with all of the laws, rules, regulations and requirements applicable to such insurers organized in this State and with Section 123B-4 of this Article to the extent such requirements are not a limitation on laws, rules, regulations or requirements of this State; or

(2) pursuant to the provisions of Article VIIC, be organized to write only liability insurance as a captive insurance company and, except as provided elsewhere in this Article, must comply with all of the laws, rules, regulations and requirements applicable to such insurers organized in this State and with Section 123B-4 of this Article to the extent such requirements are not a limitation on laws, rules, regulations or requirements of this State.

Except that, as of the effective date of this amendatory Act of 1995, a new risk retention group must qualify under

~~paragraph (1) of this subsection, and any risk retention group presently organized in accordance with paragraph (2) of this subsection shall amend its articles of incorporation and comply with paragraph (1) of this subsection within 6 months of the effective date of this amendatory Act of 1995 or cease operating under this Article.~~

B. Before it may offer insurance in any state, each risk retention group shall also submit for approval to the Director a plan of operation or a feasibility study and revisions of such plan or study if the group intends to offer any additional lines of liability insurance. In the event of any subsequent material change in any item of its plan or study, such risk retention group shall submit an appropriate revision to the Director within 10 days of any such change for approval by the Director. The group shall not offer any additional kinds of liability insurance, in this State or in any other state, until a revision of such plan or study is approved by the Director.

C. At the time of filing its application for organization, the risk retention group shall provide to the Director 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

Director shall forward the information to the NAIC. Providing notification to the NAIC is in addition to and shall not be sufficient to satisfy the requirements of Section 123B-4 of this Code or any other provisions of this Article.

D. The name under which a risk retention group may be organized and licensed shall include the phrase "Risk Retention Group".

E. Notwithstanding any other provision to the contrary, all risk retention groups chartered in this State shall file an annual statement with the Department and NAIC ~~the National Association of Insurance Commissioners~~ (NAIC). The annual statement shall be in a form prescribed by the Director. The statement may be required to be in diskette form. The statement shall be completed in accordance with the annual statement instructions and the NAIC Accounting Practices and Procedures Manual.

F. As used in this subsection F:

"Board of directors" means the governing body of the risk retention group elected by shareholders or members to establish policy, elect or appoint officers and committees, and make other governing decisions.

"Director" means a natural person designated in the articles of the risk retention group, or designated, elected, or appointed by any other manner, name, or title, to act as a director.

"Material relationship" means a relationship of a person

with the risk retention group that includes, but is not limited to:

(a) The receipt in any one 12-month period of compensation or payment of any other item of value by the person, a member of the person's immediate family, or any business with which the person is affiliated from the risk retention group or a consultant or services provider to the risk retention group is greater than or equal to 5% of the risk retention group's gross written premium for the 12-month period or 2% of its surplus, whichever is greater, as measured at the end of any fiscal quarter falling in a 12-month period. The person or immediate family member of that person is not independent until one year after his or her compensation from the risk retention group falls below the threshold.

(b) A relationship with the auditor as follows: a director or an immediate family member of a director who is affiliated with or employed in a professional capacity by a present or former internal or external auditor of the risk retention group is not independent until one year after the end of the affiliation, employment, or auditing relationship.

(c) A relationship with a related entity as follows: a director or an immediate family member of a director who is employed as an executive officer of another company where any of the risk retention group's present executives serve

on that other company's board of directors is not independent until one year after the end of the service or the employment relationship.

Within one year after the effective date of this amendatory Act of the 99th General Assembly, existing risk retention groups shall be in compliance with the following governance standards and new risk retention groups shall be in compliance with the standards at the time of licensure:

(1) The board of directors of the risk retention group shall have a majority of independent directors. If the risk retention group is a reciprocal, then the attorney-in-fact shall adhere to the same standards regarding independence of operations and governance as imposed on the risk retention group's board of directors or subscribers advisory committee under these standards and, to the extent permissible under State law, service providers of a reciprocal risk retention group shall contract with the risk retention group and not the attorney-in-fact.

No director qualifies as independent unless the board of directors affirmatively determines that the director has no material relationship with the risk retention group. Each risk retention group shall disclose these determinations to the Department at least annually and the Director may approve or refute the board's determination. For this purpose, any person that is a direct or indirect owner of or subscriber in the risk retention group (or is

an officer, director, or employee of an owner and insured, unless some other position of the officer, director, or employee constitutes a material relationship), as contemplated by 15 U.S.C. 3901(a)(4)(E)(ii), shall be deemed independent.

A material relationship shall not be deemed to exist by reason that a majority of the membership of the related entity's board of directors is the same as the membership of the board of directors of the risk retention group unless the director decides otherwise.

(2) The term of any material service provider contract with the risk retention group shall not exceed 5 years. Any contract, or its renewal, shall require the approval of the majority of the risk retention group's independent directors. The risk retention group's board of directors shall have the right to terminate any service provider, audit, or actuarial contracts at any time for cause after providing adequate notice as defined in the contract. The service provider contract is deemed material if the amount to be paid for the contract is greater than or equal to 5% of the risk retention group's annual gross written premium or 2% of its surplus, whichever is greater.

No service provider in a material relationship with the risk retention group shall enter into a contract with the risk retention group unless the risk retention group has notified the Director of Insurance in writing of its

intention to enter into a transaction at least 30 days prior thereto and the Director of Insurance has not disapproved it within that period.

For the purposes of this paragraph (2), "service providers" includes captive managers, auditors, accountants, actuaries, investment advisors, lawyers, managing general underwriters, and other parties responsible for underwriting, determination of rates, collection of premium, adjusting and settling claims or preparation of financial statements.

"Lawyers" does not include defense counsel retained by the risk retention group to defend claims, unless the amount of fees paid to the lawyers meet the definition of a material relationship.

(3) The risk retention group's board of directors shall adopt a written policy in the plan of operation as approved by the board that requires the board to:

(a) ensure that all owner-insureds of the risk retention group receive evidence of ownership interest;

(b) develop a set of governance standards applicable to the risk retention group;

(c) oversee the evaluation of the risk retention group's management, including, but not limited to, the performance of the captive manager, managing general underwriter, or other party or parties responsible for

underwriting, determination of rates, collection of premium, adjusting or settling claims or the preparation of financial statements;

(d) review and approve the amount to be paid for all material service providers; and

(e) review and approve at least annually:

(i) the risk retention group's goals and objectives relevant to the compensation of officers and service providers;

(ii) the officers' and service providers' performance in light of those goals and objectives; and

(iii) the continued engagement of the officers and material service providers.

(4) The risk retention group shall have an audit committee composed of at least 3 independent board members as defined in this subsection F. A non-independent board member may participate in the activities of the audit committee, if invited by the members, but cannot be a member of the committee.

The audit committee shall have a written charter that defines the committee's purpose, which at a minimum must be to:

(a) assist board oversight of: (I) the integrity of the financial statements, (II) the compliance with legal and regulatory requirements, and (III) the

qualifications, independence, and performance of the independent auditor and actuary;

(b) discuss the annual audited financial statements and quarterly financial statements with management;

(c) discuss the annual audited financial statements with its independent auditor and, if advisable, discuss its quarterly financial statements with its independent auditor;

(d) discuss policies with respect to risk assessment and risk management;

(e) meet separately and periodically, either directly or through a designated representative of the committee, with management and independent auditors;

(f) review with the independent auditor any audit problems or difficulties and management's response;

(g) set clear hiring policies of the risk retention group as to the hiring of employees or former employees of the independent auditor;

(h) require the external auditor to rotate the lead or coordinating audit partner having primary responsibility for the risk retention group's audit as well as the audit partner responsible for reviewing that audit so that neither individual performs audit services for more than 5 consecutive fiscal years; and

(i) report regularly to the board of directors.

The Department may waive the requirement to establish an audit committee composed of independent board members if the risk retention group is able to demonstrate to the Department that it is impracticable to do so and the risk retention group's board of directors itself is otherwise able to accomplish the purposes of an audit committee as described in this paragraph (4).

(5) The board of directors shall adopt and disclose governance standards, either through electronic or other means, and provide information to members and insureds upon request, including, but not limited to:

(a) a process by which the directors are elected by the owner or insureds;

(b) director qualification standards;

(c) director responsibilities;

(d) director access to management and, as necessary and appropriate, independent advisors;

(e) director compensation;

(f) director orientation and continuing education;

(g) the policies and procedures that are followed for management succession; and

(h) the policies and procedures that are followed for annual performance evaluation of the board.

(6) The board of directors shall adopt and disclose a code of business conduct and ethics for directors, officers, and employees and promptly disclose to the board

of directors any waivers of the code for directors or executive officers. The code of business conduct and ethics shall include, but is not limited to, the following topics:

(a) conflicts of interest;

(b) matters covered under the corporate opportunities doctrine under the state of domicile;

(c) confidentiality;

(d) fair dealing;

(e) protection and proper use of risk retention group assets;

(f) compliance with all applicable laws, rules, and regulations; and

(g) the required reporting of any illegal or unethical behavior that affects the operation of the risk retention group.

(7) The captive manager, president, or chief executive officer of the risk retention group shall promptly notify the Department in writing if he or she becomes aware of any material non-compliance with any of these governance standards.

(Source: P.A. 89-97, eff. 7-7-95.)

(215 ILCS 5/123B-4) (from Ch. 73, par. 735B-4)

(Section scheduled to be repealed on January 1, 2017)

Sec. 123B-4. Risk retention groups not organized in this State. Any risk retention group organized and licensed in a

state other than this State and seeking to do business as a risk retention group in this State shall comply with the laws of this State as follows:

A. Notice of operations and designation of the Director as agent.

Before offering insurance in this State, a risk retention group shall submit to the Director on a form prescribed by the NAIC ~~approved by the Director~~:

(1) a statement identifying the state or states in which the risk retention group is organized and licensed as a liability insurance company, its date of organization, its principal place of business, and such other information, including information on its membership, as the Director may require to verify that the risk retention group is qualified under subsection (11) of Section 123B-2 of this Article;

(2) a copy of its plan of operations or a feasibility study and revisions of such 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 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 organized and operating for not less than 3 years before such date;

and

(3) a statement of registration which designates the Director as its agent for the purpose of receiving service of legal documents or process, together with a filing fee of \$200 payable to the Director.

A risk retention group shall submit a copy of any material revision to its plan of operation or feasibility study required by subsection B of Section 123B-3 of this Code within 30 days after the date of the approval of the revision by the Director or, if no such approval is required, within 30 days after filing.

B. Financial condition. Any risk retention group doing business in this State shall submit to the Director:

(1) a copy of the group's financial statement submitted to the state in which the risk retention group is organized 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 NAIC ~~National Association of Insurance Commissioners~~);

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

(3) upon request by the Director, a copy of any information or document pertaining to any outside audit

performed with respect to the risk retention group; and

(4) such information as may be required to verify its continuing qualification as a risk retention group under subsection (11) of Section 123B-2.

C. Taxation.

(1) Each risk retention group shall be 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 Director the net premiums written for risks resident or 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.

(2) To the extent licensed insurance producers are utilized pursuant to Section 123B-11, they shall report to the Director the premiums for direct business for risks resident or located within this State which such licensees have placed with or on behalf of a risk retention group not organized in this State.

(3) To the extent that licensed insurance producers are utilized pursuant to Section 123B-11, each such producer shall keep a complete and separate record of all policies procured from each such risk retention group, which record shall be open to examination by the Director, as provided in Section 506.1 of this Code. These records shall, for each policy and each kind of insurance provided thereunder,

include the following:

- (a) the limit of the liability;
- (b) the time period covered;
- (c) the effective date;
- (d) the name of the risk retention group which issued the policy;
- (e) the gross premium charged; and
- (f) the amount of return premiums, if any.

D. Compliance With unfair claims practices provisions. Any risk retention group, its agents and representatives shall be subject to the unfair claims practices provisions of Sections 154.5 through 154.8 of this Code.

E. Deceptive, false, or fraudulent practices. Any risk retention group shall comply with the laws of this State regarding deceptive, false, or fraudulent acts or practices. However, if the Director seeks an injunction regarding such conduct, the injunction must be obtained from a court of competent jurisdiction.

F. Examination regarding financial condition. Any risk retention group must submit to an examination by the Director to determine its financial condition if the commissioner of insurance of the jurisdiction in which the group is organized and licensed has not initiated an examination or does not initiate an examination within 60 days after a request by the Director. Any such examination shall be coordinated to avoid unjustified repetition and conducted in an expeditious manner

and in accordance with the NAIC's ~~National Association of Insurance Commissioners'~~ Examiner Handbook.

G. Notice to purchasers. Every application form for insurance from a risk retention group and the front page and declaration page of every policy issued by a risk retention group shall contain in 10 point type the following notice:

"NOTICE

This policy is issued by your risk retention group. Your risk retention group is not subject to all of the insurance laws and regulations of your state. State insurance insolvency guaranty fund protection is not available for your risk retention group".

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

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

I. 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 such risk retention group, other than in the case of a risk retention group all of whose members are insurance companies.

J. Prohibited coverage. No risk retention group may offer insurance policy coverage prohibited by Articles IX or XI of this Code or declared unlawful by the Illinois Supreme Court; provided however, a risk retention group organized and licensed in a state other than this State that selects the law of this State to govern the validity, construction, or enforceability of policies issued by it is permitted to provide coverage under policies issued by it for penalties in the nature of compensatory damages including, without limitation, punitive damages and the multiplied portion of multiple damages, so long as coverage of those penalties is not prohibited by the law of the state under which the risk retention group is organized.

K. Delinquency proceedings. A risk retention group not organized in this State and doing business in this State shall comply with a lawful order issued in a voluntary dissolution proceeding or in a conservation, rehabilitation, liquidation, or other delinquency proceeding commenced by the Director or by another state insurance commissioner if there has been a finding of financial impairment after an examination under subsection F of Section 123B-4 of this Article.

L. Compliance with injunctive relief. A risk retention group shall comply with an injunctive order issued in another state by a court of competent jurisdiction or by a United States District Court based on a finding of financial impairment or hazardous financial condition.

M. Penalties. A risk retention group that violates any

provision of this Article will be subject to fines and penalties applicable to licensed insurers generally, including revocation of its license or the right to do business in this State, or both.

N. (Blank). ~~Operations prior to August 3, 1987. In addition to complying with the requirements of this Section, any risk retention group operating in this State prior to August 3, 1987, shall within 30 days after such effective date comply with the provisions of subsection A of this Section.~~

(Source: P.A. 93-32, eff. 7-1-03.)

(215 ILCS 5/123B-7) (from Ch. 73, par. 735B-7)

(Section scheduled to be repealed on January 1, 2017)

Sec. 123B-7. Purchasing Groups - Exemption from Certain Laws Relating to the Group Purchase of Insurance. Any purchasing group meeting the criteria established under the provisions of the federal Liability Risk Retention Act of 1986 shall be exempt from any law of this State prohibiting relating ~~to~~ the creation of risk purchasing of groups for the purchase of insurance; any countersignature requirements as provided in this Code; and any prohibition of group purchasing or any law that would discriminate against a purchasing group or its members, prohibit a purchasing group from obtaining insurance on a group basis or 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, require

that a purchasing group must have a minimum number of members, common ownership or affiliation, or certain legal form, or require that a certain percentage of a purchasing group must obtain insurance on a group basis. In addition, an insurer shall be exempt from any law of this State which 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.

(Source: P.A. 85-131.)