

the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 15. This act shall expire June 30, 1990.

NEW SECTION. Sec. 16. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately.

Passed the House March 20, 1987.

Passed the Senate April 7, 1987.

Approved by the Governor May 11, 1987.

Filed in Office of Secretary of State May 11, 1987.

CHAPTER 306

[House Bill No. 379]

RISK RETENTION GROUPS REGULATED

AN ACT Relating to insurance; adding a new chapter to Title 48 RCW; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The purpose of this chapter is to regulate the formation and operation of risk retention groups in this state formed pursuant to the provisions of the federal Liability Risk Retention Act of 1986.

NEW SECTION. Sec. 2. As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise:

(1) "Commissioner" means the insurance commissioner of Washington state or the commissioner, director, or superintendent of insurance in any other state.

(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 this state.

(6) "Liability" 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 such other persons resulting from or arising out of:

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

(b) Any activity of any state or local government, or any agency or political subdivision thereof.

"Liability" 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 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 from responsibilities or activities referred to in 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) The coverages, deductibles, coverage limits, rates, and rating classification systems for each line of insurance the group intends to offer;

(b) Historical and expected loss experience of the proposed members and national experience of similar exposures;

(c) Pro forma financial statements and projections;

(d) 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;

(e) Identification of management, underwriting procedures, managerial oversight methods, and investment policies; and

(f) Such other matters as may be prescribed by the commissioner for liability insurance companies authorized by the insurance laws of the 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 the insurance only for its group members and only to cover their similar or related liability exposure, as described in (c) of this subsection;

(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 formed under the laws of any state, Bermuda, or the Cayman Islands:

(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 (a) of this subsection;

(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 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 that date and only for the purpose of continuing to provide insurance to cover product liability or completed operations liability as the terms were defined in the federal Product Liability Risk Retention Act of 1981 before the date of the enactment of the federal 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 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

(ii) Has as its sole member and sole owner an organization which is owned by persons who are provided insurance by the risk retention 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 the group or member meets the requirement described in (f) of this subsection from 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.

NEW SECTION. Sec. 3. 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 this chapter, must comply with all of the laws, rules, regulations, and requirements applicable to the insurers chartered and licensed in this state and with section 4 of this act to the extent the requirements are not a limitation on laws, rules, regulations, or requirements of this state. Before it may offer insurance in any state, each risk retention group shall also submit for approval to the insurance commissioner of this state a plan of operation or a feasibility study and revisions of the plan or study if the group intends to offer any additional lines of liability insurance.

NEW SECTION. Sec. 4. 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 follows:

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

(a) 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 any other information including information on its membership, as the commissioner of this state may require to verify that the risk retention group is qualified under section 2(11) of this act;

(b) 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 any line or classification of liability insurance which: (i) Was defined in the federal Product Liability Risk Retention Act of 1981 before October 27, 1986; and

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

(c) A statement of registration which designates the commissioner as its agent for the purpose of receiving service of legal documents or process.

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

(a) 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;

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

(c) Upon request by the commissioner, a copy of any audit performed with respect to the risk retention group; and

(d) Any information as may be required to verify its continuing qualification as a risk retention group under section 2(11) of this act.

(3)(a) All premiums paid for coverages within this state to risk retention groups shall be subject to taxation at the same rate and subject to the same interest, fines, and penalties for nonpayment as that applicable to foreign admitted 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.

(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.

(4) Any risk retention group, its agents and representatives, shall be subject to any and all unfair claims settlement practices statutes and regulations specifically denominated by the commissioner as unfair claims settlement practices regulations.

(5) Any risk retention group, its agents and representatives, shall be subject to the provisions of chapter 48.30 RCW pertaining to deceptive, false, or fraudulent acts or practices. However, if the commissioner seeks an injunction regarding such conduct, the injunction must be obtained from a court of competent jurisdiction.

(6) Any 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 sixty days after a request by the commissioner of this state. The examination shall be coordinated to avoid

unjustified repetition and conducted in an expeditious manner and in accordance with the national association of insurance commissioners' examiner handbook.

(7) Any policy issued by a risk retention group shall contain in ten-point type on the front page and the declaration page, the following 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.

(8) The following acts by a risk retention group are hereby prohibited:

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

(b) 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.

(9) 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.

(10) No risk retention group may offer insurance policy coverage prohibited by Title 48 RCW or declared unlawful by the highest court of this state.

(11) A risk retention group not chartered in this state and doing business in this state shall 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 4(6) of this act.

NEW SECTION. Sec. 5. (1) No risk retention group shall be permitted to join or contribute financially to any insurance insolvency guaranty fund, or similar mechanism, in this state, nor shall any risk retention group, or its insureds, receive any benefit from any such fund for claims arising out of the operations of the risk retention group.

(2) A risk retention group shall participate in this state's joint underwriting associations and mandatory liability pools or plans required by the commissioners.

NEW SECTION. Sec. 6. A policy of insurance issued to a risk retention group or any member of that group shall not be required to be countersigned.

NEW SECTION. Sec. 7. 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 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 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.

NEW SECTION. Sec. 8. (1) A purchasing group which intends to do business in this state shall furnish notice to the commissioner which shall:

- (a) Identify the state in which the group is domiciled;
- (b) Specify the lines and classifications of liability insurance which the purchasing group intends to purchase;
- (c) Identify the insurance company from which the group intends to purchase its insurance and the domicile of that company;
- (d) Identify the principal place of business of the group; and
- (e) Provide any other information as may be required by the commissioner to verify that the purchasing group is qualified under section 2(10) of this act.

(2) 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, except that this requirement shall not apply in the case of a purchasing group:

- (a) Which:
 - (i) Was domiciled before April 2, 1986; and
 - (ii) Is domiciled on and after October 27, 1986, in any state of the United States;
- (b) Which:
 - (i) Before October 27, 1986, purchased insurance from an insurance carrier licensed in any state;
 - (ii) Since October 27, 1986, purchased its insurance from an insurance carrier licensed in any state;
- (c) Which was a purchasing group under the requirements of the federal Product Liability Retention Act of 1981 before October 27, 1986; and
- (d) Which does not purchase insurance that was not authorized for purposes of an exemption under that act, as in effect before October 27, 1986.

NEW SECTION. Sec. 9. 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 that state.

NEW SECTION. Sec. 10. The commissioner is authorized to make use of any of the powers established under Title 48 RCW to enforce the laws of this state so long as those powers are not specifically preempted by

the federal Product Liability Risk Retention Act of 1981, as amended by the federal 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 any investigation, administrative proceedings, or litigation, the commissioner can rely on the procedural law and regulations of the state. The injunctive authority of the commissioner in regard to risk retention groups is restricted by the requirement that any injunction be issued by a court of competent jurisdiction.

NEW SECTION. Sec. 11. A risk retention group which violates any provision of this chapter shall 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.

NEW SECTION. Sec. 12. Any person acting, or offering to act, as an agent or broker for a risk retention group or purchasing group, which solicits members, sells insurance coverage, purchases coverage for its members located within the state or otherwise does business in this state shall be subject to the provisions of chapter 48.17 RCW and before commencing any such activity, obtain a license and pay the fees designated for the license under RCW 48.14.010.

NEW SECTION. Sec. 13. 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 or in all states or in any 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.

NEW SECTION. Sec. 14. The commissioner may establish and from time to time amend the rules relating to risk retention groups as may be necessary or desirable to carry out the provisions of this chapter.

NEW SECTION. Sec. 15. Sections 1 through 14 of this act shall constitute a new chapter in Title 48 RCW.

NEW SECTION. Sec. 16. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately.

Passed the House February 25, 1987.

Passed the Senate April 13, 1987.

Approved by the Governor May 11, 1987.

Filed in Office of Secretary of State May 11, 1987.