WEST VIRGINIA CODE: §33-32-2

§33-32-2. Definitions.

As used in this article, the term:

(a) "Commissioner" means the Insurance Commissioner of the State of West Virginia or the commissioner, director or superintendent of insurance in any other state.

(b) "Completed operations liability" means liability arising out of the installation, maintenance or repair of any product at a site which is now owned or controlled by:

(1) Any person who performs that work; or

(2) 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.

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

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

(2) For an unincorporated entity, the state of its principal place of business.

(d) "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:

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

(2) To pay other obligations in the normal course of business.

(e) "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.

(f) "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:

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

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(2) Any activity of any state or local government, or any agency or political subdivision thereof; or

(3) 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.

(g) "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 (f);

(h) "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:

(1) 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;

(2) For each state in which the risk retention group 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 procedures, 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 the risk retention group's status in each such state; and

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

(i) "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

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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.

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

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

(2) Purchases such insurance only for its group members and only to cover their similar or related liability exposure, as described in subsection (j)(3) of this section;

(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 any related, similar, or common business, trade, product, services, premises or operations; and

(4) Is domiciled in any state.

(k) "Risk retention group" means any corporation or other

limited liability association formed under the laws of any state: (1) Whose primary activity consists of assuming and spreading all, or any portion, of the liability exposure of its group members;

(2) Which is organized for the primary purpose of conducting the activity described under subdivision (1), subsection (k) of this section;

(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 any 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 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 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 any person from membership in the group solely to provide for members of such a group a competitive advantage over such a person;

(5) Which: (A) Has as its owners only persons who comprise the membership of the risk retention group and who are provided insurance by such group; or

(B) Has as its sole owner an organization which has as: (i) Its members only persons who comprise the membership of the risk retention group; and

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(ii) Its owners only persons who comprise the membership of the risk retention group and who are provided insurance by such group;

(6) 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;

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

(A) Liability insurance for assuming and spreading all or any 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 such other group which is engaged in businesses or activities so that such group or member meets the reinsurance requirement set forth herein, from membership in the risk retention group which provides such reinsurance; and

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

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

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