WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1987

ENROLLED

Com. Sub. for

HOUSE BILL No. 2970

(By Delegate Southern and Phillips)

Passed March 14, 1987

In Effect Ninety Days From Passage
ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 2970
(By Delegates Southern and Phillips)

[Passed March 14, 1987; in effect ninety days from passage.]

AN ACT to amend chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article thirty-one, relating to captive insurance; definitions; licensing; authority; names of companies; minimum capital; letter of credit; minimum surplus; letter of credit; formation of captive insurance companies in this state; reports and statements; examinations and investigations; grounds and procedures for suspension or revocation of license; legal investments; reinsurance; rating organizations; memberships; exemption from compulsory associations; tax on premiums collected; rules and regulations; and laws applicable; and by adding a new article designated article thirty-two, relating to the formation and operation of risk retention groups; definitions; risk retention groups chartered in this state; risk retention groups not chartered in this state; taxation; compliance with unfair claims settlement practices law; prohibitive, deceptive, false or fraudulent practices; examination regarding financial condition; notice to purchasers; prohibited acts regarding solicitation or sale; prohibited coverage; delinquency proceedings; compulsory associations; countersignatures not required; purchasing groups exemption; notice and
registration requirements of purchasing groups; restrictions on insurance purchased by purchasing groups; administrative and procedural authority; penalties; duty on agents or brokers to obtain license; binding effect of orders issued in the United States District Court; and rules.

Be it enacted by the Legislature of West Virginia:

That chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto two new articles, designated articles thirty-one and thirty-two, to read as follows:

ARTICLE 31. CAPTIVE INSURANCE.

§33-31-1. Definitions.

As used in this chapter, unless the context requires otherwise:

1. "Affiliated company" means any company in the same corporate system as a parent, an industrial insured, or a member organization by virtue of common ownership, control, operation or management.

2. "Association" means any legal association of individuals, corporations, partnerships or associations that has been in continuous existence for at least one year, the member organizations of which collectively:

   (A) Own, control or hold with power to vote all for the outstanding voting securities of an association captive insurance company incorporated as a stock insurer; or

   (B) Have complete voting control over an association captive insurance company incorporated as a mutual insurer.

3. "Association captive insurance company" means any company that insures risks of the member organizations of the association, and their affiliated companies.

4. "Captive insurance company" means any pure captive insurance company, association captive insurance company, or industrial insured captive insurance company formed or licensed under the provisions of this
chapter.

(5) "Commissioner" means the insurance commission of West Virginia.

(6) "Industrial insured" means an insured:

(A) Who procures the insurance of any risk or risks by use of the services of a full-time employee acting as an insurance manager or buyer;

(B) Whose aggregate annual premiums for insurance on all risks total at least twenty-five thousand dollars;

and

(C) Who has at least twenty-five full-time employees.

(7) "Industrial insured captive insurance company" means any company that insures risks of the industrial insureds that comprise the industrial insured group and their affiliated companies.

(8) "Industrial insured group" means any group that meets either of the following criteria:

(A) Any group of industrial insureds that collectively:

(i) Own, control or hold with power to vote all of the outstanding voting securities of an industrial insured captive insurance company incorporated as a stock insurer; or

(ii) Have complete voting control over an industrial insured captive insurance company incorporated as a mutual insurer; or

(B) Any group which is created under the Product Liability Risk Retention Act of 1981 (U.S. Public Law 97-45) as a corporation or other limited liability association taxable as a stock insurance company or a mutual insurer under the law of the state of West Virginia:

(i) Whose primary activity consists of assuming and spreading all, or any portion, of the product liability or completed operations liability risk exposure of its group members;

(ii) Which is organized for the primary purpose of
conducted the activity described in subdivision (i) of this section;

(iii) Which does not exclude any person from membership in the group solely to provide for members of such group a competitive advantage over such a person; and
(iv) Which is composed of members each of whose principal activity consists of the manufacture, design, importation, distribution, packaging, labeling, lease or sale of a product or products.

(9) “Member organization” means any individual, corporation, partnership or association that belongs to an association.

(10) “Parent” means a corporation, partnership or individual that directly or indirectly owns, controls, or holds with power to vote more than fifty percent of the outstanding voting securities of a pure captive insurance company.

(11) “Pure captive insurance company” means any company that insures risks of its parent and affiliated companies.

§33-31-2. Licensing; authority.

(a) Any captive insurance company, when permitted by its articles of association or charter, may apply to the commissioner for a license to do any and all insurance comprised in chapter thirty-three of this code: Provided, That said captive insurance company maintains its principal office and principal place of business in this state: Provided, however, That:

(1) No pure captive insurance company may insure any risks other than those of its parent and affiliated companies;

(2) No association captive insurance company may insure any risks other than those of the member organizations of its association, and their affiliated companies;

(3) No industrial insured captive insurance company may insure any risks other than those of the industrial
insureds that comprise the industrial insured group and
their affiliated companies;

(4) No captive insurance company may provide
personal motor vehicle or homeowner’s insurance
coverage or any component thereof; and

(5) No captive insurance company may accept or cede
reinsurance except as provided in section eleven hereof.

(b) No captive insurance company may do any insu-
rance business in this state unless:

(1) It first obtains from the commissioner a license
authorizing it to do insurance business in this state;

(2) Its board of directors holds at least one meeting
each year in this state;

(3) It maintains its principal place of business in this
state; and

(4) It appoints a resident registered agent to accept
service of process and to otherwise act on its behalf in
this state. Whenever such registered agent cannot with
reasonable diligence be found at the registered office of
the captive insurance company, the secretary of state
shall be an agent of such captive insurance company
upon whom any process, notice, or demand may be
served.

(c) Before receiving a license, a captive insurance
company shall file with the commissioner a certified
copy of its charter and bylaws, a statement under oath
of its president and secretary showing its financial
condition, and any other statements or documents
required by the commissioner.

In addition to the information required above, each
applicant captive insurance company shall file with the
commissioner evidence of the following:

(1) The amount and liquidity of its assets relative to
the risks to be assumed;

(2) The adequacy of the expertise, experience, and
character of the person or persons who will manage it;
(3) The overall soundness of its plan of operation;

(4) The adequacy of the loss prevention programs of its parent, member organizations, or industrial insureds as applicable; and

(5) Such other factors deemed relevant by the commissioner in ascertaining whether the proposed captive insurance company will be able to meet its policy obligations.

(d) Each captive insurance company shall pay to the commissioner a nonrefundable fee of two hundred dollars for examining, investigating, and processing its application for license and upon issuance of a license, an annual license fee of three hundred dollars. In addition, it shall pay fees and charges in accordance with article three of this chapter.

(e) If the commissioner is satisfied that the documents and statements that such captive insurance company has filed comply with the provisions of this chapter, he may grant a license authorizing it to do insurance business in this state until April first, thereafter, which license may be renewed.

§33-31-3. Names of companies.

No captive insurance company shall adopt a name that is the same, deceptively similar, or likely to be confused with or mistaken for any other existing business name registered in the state of West Virginia.

§33-31-4. Minimum capital; letter of credit.

No pure captive insurance company, association captive insurance company incorporated as a stock insurer, or industrial insured captive insurance company incorporated as a stock insurer shall be issued a license unless it shall possess and thereafter maintain unimpaired paid-in capital of:

(1) In the case of a pure captive insurance company, not less than one hundred thousand dollars;

(2) In the case of an association captive insurance company incorporated as a stock insurer, not less than
three hundred twenty thousand dollars; and

(3) In the case of an industrial insured captive insurance company incorporated as a stock insurer, not less than one hundred sixty thousand dollars.

Such capital may be in the form of cash or an irrevocable letter of credit issued by a bank chartered by the state of West Virginia or a member bank of the federal reserve system and approved by the commissioner.

§33-31-5. Minimum surplus; letter of credit.

No captive insurance company shall be issued a license unless it shall possess and thereafter maintain free surplus of:

(1) In the case of a pure captive insurance company, not less than one hundred fifty thousand dollars;

(2) In the case of an association captive insurance company incorporated as a stock insurer, not less than two hundred eighty thousand dollars;

(3) In the case of an industrial insured captive insurance company incorporated as a stock insurer, not less than two hundred forty thousand dollars;

(4) In the case of an association captive insurance company incorporated as a mutual insurer, not less than six hundred thousand dollars; and

(5) In the case of an industrial insured captive insurance company incorporated as a mutual insurer, not less than four hundred thousand dollars.

Such surplus may be in the form of cash or an irrevocable letter of credit issued by a bank chartered by the state of West Virginia or member bank of the federal reserve system and approved by the commissioner.

§33-31-6. Formation of captive insurance companies in this state.

(a) A pure captive insurance company shall be incorporated as a stock insurer with its capital divided...
(b) An association captive insurance company or an industrial insured captive insurance company may be incorporated:

(1) As a stock insurer with its capital divided into shares and held by the stockholders; or

(2) As a mutual insurer without capital stock, the governing body of which is elected by the member organizations of its association.

(c) A captive insurance company shall have at least one incorporator who shall be a resident of this state.

(d) Before the articles of association are transmitted to the secretary of state, the incorporators shall petition the commissioner to issue a certificate setting forth his finding that the establishment and maintenance of the proposed corporation will promote the general good of the state. In arriving at such finding the commissioner shall consider:

(1) The character, reputation, financial standing and purpose of the incorporators;

(2) The character, reputation, financial responsibility, insurance experience, and business qualifications of the officers and directors; and

(3) Such other aspects as the commissioner shall deem advisable.

(e) The articles of association, such certificate, and the organization fee shall be transmitted to the secretary of state, who shall thereupon record both the articles of incorporation and the certificate.

(f) The capital stock of a captive insurance company incorporated as a stock insurer shall be issued at not less than par value.

(g) At least one of the members of the board of directors of a captive insurance company incorporated in this state shall be a resident of this state.

(h) Captive insurance companies formed under the
provisions of this chapter shall have the privileges and
be subject to the provisions of the general corporation
law as well as the applicable provisions contained in this
chapter. In the event of conflict between the provisions
of said general corporation law and the provisions of this
chapter, the latter shall control.

§33-31-7. Reports and statements.

(a) Captive insurance companies shall not be required
to make any annual report except as provided in this
chapter.

(b) On or before March first of each year, each captive
insurance company shall submit to the commissioner a
report of its financial condition, verified by oath of two
of its executive officers. Each association captive
insurance company shall file its report in the form
required by section fourteen, article three of this
chapter. The commissioner shall by rule propose the
form in which pure captive insurance companies and
industrial insured captive insurance companies shall
report.

§33-31-8. Examinations and investigations.

At least once in three years, and whenever the
commissioner determines it to be prudent, he shall
personally, or by some competent person appointed by
him, visit each captive insurance company and tho-
roughly inspect and examine its affairs to ascertain its
financial condition, its ability to fulfill its obligations
and whether it has complied with the provisions of this
chapter. The commissioner upon application, in his
discretion, may extend the aforesaid three-year period
to five years, provided said captive insurance company
is subject to a comprehensive annual audit during such
period of a scope satisfactory to the commissioner by
independent auditors approved by him. The expenses
and charges of the examination shall be paid to the state
by the company or companies examined and the finance
director shall issue his warrants for the proper charges
incurred in all examinations.

§33-31-9. Grounds and procedures for suspension or
revocation of license.

(a) The license of a captive insurance company to do any insurance business in this state may be suspended or revoked by the commissioner for any of the following reasons:

1. Insolvency or impairment of capital or surplus;
2. Failure to meet the requirements of section four or five of this article;
3. Refusal or failure to submit an annual report, as required by section seven of this article, or any other report or statement required by law or by lawful order of the commissioner;
4. Failure to comply with the provisions of its own charter or bylaws;
5. Failure to submit to examination or any legal obligation relative thereto, as required by section eight of this article;
6. Failure to pay the cost of examination as required by section eight of this article;
7. Use of methods that, although not otherwise specifically prohibited by law, nevertheless render its operation detrimental or its condition unsound with respect to the public or to its policyholders; or
8. Failure otherwise to comply with the laws of this state.

(b) If the commissioner finds, upon examination, hearing or other evidence, that any captive insurance company has committed any of the acts specified in subsection (a), he may suspend or revoke such license if he deems it in the best interest of the public and the policyholders of such captive insurance company, notwithstanding any other provision of this title.

§33-31-10. Legal investments.

(a) An association captive insurance company shall comply with the investment requirements of the commissioner.
(b) No pure captive insurance company or industrial
insured captive insurance company may be subject to
any restrictions on allowable investments whatever. The
commissioner may, however, prohibit or limit any
investment that threatens the solvency or liquidity of
any such company.

(a) Any captive insurance company may provide
reinsurance, as required in section fifteen, article four
of this chapter, on risks ceded by any other insurer.
(b) Any captive insurance company may take credit
for reserves on risks ceded to a reinsurer: Provided,
That no captive insurance company may reinsure a risk
or part thereof with reinsurers not complying with the
provisions of section seventeen, article four of this
chapter.

§33-31-12. Rating organizations; memberships.
No captive insurance company may be required to join
a rating organization.

No captive insurance company may be permitted to
join or contribute financially to any plan, pool, associ-
ation or guaranty or insolvency fund in this state, nor
any captive insurance company, or its insured, or its
parent or any affiliated company, or any member
organization of its association, receive any benefit from
any such plan, pool, association or guaranty or insol-
veney fund for claims arising out of the operations of
such captive insurance company.

§33-31-14. Tax on premiums collected.
(a) Each captive insurance company shall pay to the
commissioner, in the month of February of each year,
a tax at the rate of five tenths of one percent on the gross
amount of all premiums collected or contracted for on
policies or contracts of insurance covering property or
risks in this state and on risks and property situated
elsewhere upon which no premium tax is otherwise paid
during the year ending December thirty-first, next
preceding, after deducting from the gross amount of
premiums, subject to the tax, the amount received as
reinsurance premiums on business in the state and the
amount paid to policyholders as return premiums which
shall include dividends on unabsorbed premiums or
premium deposits returned or credited to policyholders.

(b) The tax provided for in this section shall constitute
all taxes collectible under the laws of this state from any
captive insurance company, and no other premium tax
or other taxes shall be levied or collected from any
captive insurance company by the state or any county,
city or municipality within this state, except ad valorem
taxes.


The commissioner may establish rules and from time
to time amend such rules relating to captive insurance
companies as are necessary to enable him to carry out
the provisions of this chapter.

§33-31-16. Laws applicable.

No provisions of this code, other than those contained
in this chapter or contained in specific references
contained in this chapter, may apply to captive insu-
rance companies.

ARTICLE 32. RISK RETENTION ACT.

§33-32-1. Purpose and short title.

The purpose of this act 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, hereinafter referred to as
"RRA 1986". This article may be referred to as the Risk
Retention Act of West Virginia.


As used in this article, the term:

(a) "Commissioner" means the insurance commis-
sioner 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;
(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 herein;

(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) The coverages, deductibles, coverage limits, rates, and rating classification systems for each line of insurance the group intends to offer;

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

(3) Pro forma financial statements and projections;

(4) Appropriate opinions by a qualified, independent casualty actuary, including a determination of minimum premium or participation levels required to commence operations and to prevent a hazardous financial condition;

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

(6) 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 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.

(i) "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 subparagraph (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 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 subparagraph (1);

(3) 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 the first day of January, one thousand nine hundred eighty-eight, was chartered or licensed and authorized to engage in the business of insurance under the laws of this state, 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 1986 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 has as it 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:

(A) Has as its sole owner an organization which is owned by persons who are provided insurance by the risk retention group.

(6) Whose members are engaged in businesses or activities similar or related with respect to the liability of which 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”.
"State" means any state of the United States or the District of Columbia.

§33-32-3. Risk retention groups chartered in this state.

A risk retention group seeking to be chartered in this state must be chartered and licensed as a liability insurance company authorized by the insurance laws of this state and, except as provided elsewhere in this article, must comply with all of the laws, rules, regulations and requirements applicable to such insurers chartered and licensed in this state and with section 4 of this article to the extent such 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 such plan or study if the group intends to offer any additional lines of liability insurance.

§33-32-4. Risk retention groups not chartered in this state.

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:

(A) 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:

(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 such 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 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 federal product liability
risk retention act of 1981 before the twenty-seventh day
of October, one thousand nine hundred eighty-six and (b)
was offered before such date by any risk retention group
which had been chartered and operating for not less
than three years before such date; and

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

(B) Financial condition.

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

(1) A copy of the group’s financial statement submit-
ted to its state of domicile, which shall be certified by
an independent public accountant and contain a state-
ment 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
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
this article.

§33-32-5. Tax on premiums collected.

(a) Each risk retention group shall be subject to the
same interests, fines and penalties for non-payment as
that generally applicable to insurers under article three,
chapter thirty-three of this code: Provided, That the
premium tax or other taxes on each risk retention group
shall be in accordance with the provisions of this section. Each risk retention group insurance company shall pay to the commissioner, in the month of February of each year, a tax at the rate of three quarters of one percent on the gross amount of all premiums collected or contracted for on policies or contracts of insurance covering property or risks in this state and on risks and property situated elsewhere upon which no premium tax is otherwise paid during the year ending December 31 next preceding, after deducting from the gross amount of premiums subject to the tax the amount received as reinsurance premiums on business in the state and the amount paid to policyholders as return premiums which shall include dividends on unabsorbed premiums or premium deposits returned or credited to policyholders: Provided, however, That the three quarters of one percent premium tax provided for herein shall be waived for a period of five years and thereafter be applicable at a reduced rate of one-half of one percent on the gross amount of premiums provided for herein-above, if the said risk retention groups makes a minimum qualified investment of two million dollars in the state of West Virginia during the five year waiver period, as a direct result thereof and the tax commissioner so certifies.

(b) The tax provided for in this section shall constitute all taxes collectible under the laws of this state from any risk retention group, and no other premium tax or other taxes shall be levied or collected from any risk retention group by the state or any county, city or municipality within this state, except ad valorem taxes

(c) 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.

(d) To the extent agents or brokers are not utilized or fail to pay the subject tax, or taxes, each risk retention group shall pay the subject tax or taxes, risks insured within the state. Further, each risk retention group shall report all premiums paid to it for risks insured within the state.
§33-32-6. Compliance with unfair claims settlement practices law.

Any risk retention group, its agents and representatives, shall comply with the laws of this state, as set forth in chapter thirty-three of this code, regarding unfair claims settlement practices act of this state.

§33-32-7. Prohibitive, deceptive, false, or fraudulent practices.

Any risk retention group shall comply with the laws of this state, as provided in chapter thirty-three of this code, regarding prohibitive, 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.


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. Any such examination shall be coordinated to avoid unjustified repetition and conducted in an expeditious manner.


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:

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.

§33-32-10. 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.

§33-32-11. 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.

§33-32-12. Prohibited coverage.

No risk retention group may offer insurance policy coverage prohibited by chapter thirty-three of this code or ruled unlawful by the highest court of this state.


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 four of this article.


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 such risk retention group.


A policy of insurance issued to a risk retention group or any member of that group shall not be required to
§33-32-16. 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 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.

§33-32-17. Notice and registration requirements of purchasing groups.

(a) A purchasing group which intends to do business in this state shall furnish notice to the commissioner which shall:

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

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

(3) Identify the insurance company from which the group intends to purchase its insurance and the domicile of such company;

(4) Identify the principal place of business of the groups; and

(5) Provide such other information as may be required by the commissioner to verify that the purchasing group is qualified under this article.

(b) 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, except that such
requirements shall not apply in the case of a purchasing
group which:

(1) Was domiciled before the first day of April, one
thousand nine hundred eighty-six;

(2) Is domiciled on and after the second day of
October, one thousand nine hundred eighty-six in any
state of the United States which:

(i) Before the twenty-seventh day of October, one
thousand nine hundred eighty-six purchased insurance
from an insurance carrier licensed in any state; and

(ii) Since the twenty-seventh day of October, one
thousand nine hundred eighty-six, purchased its insu-
rance from an insurance carrier licensed in any state;

(3) Which was a purchasing group under the require-
ments of the product liability risk retention act of 1981
before the twenty-seventh day of October, one thousand
nine hundred eighty-six; and

(4) Which does not purchase insurance that was not
authorized for purposes of an exemption under that Act,
as in effect before the twenty-seventh day of October,
one thousand nine hundred eighty-six.

§33-32-18. Restrictions on insurance purchased by pur-
chasing groups.

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

§33-32-19. Administrative and procedural authority
regarding risk retention groups and pur-
chasing groups.

The commissioner is authorized to make use of any of
the powers established under chapter thirty-three of this
code to enforce the laws of this state so long as those powers are not specifically preempted by the national product liability risk retention act of 1981, as amended by the risk retention amendments of 1986. This includes, but is not limited to, the commissioner's administrative authority to investigate, issue subpoenas, conduct depositions and hearings, issue orders, and impose penalties. With regard to 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.

A risk retention group which violates any provision of this Act will be subject to fines and penalties applicable to licensed insurers generally, including revocation of its license and/or the right to do business in this state.

§33-32-21. Duty on agents or brokers to obtain license.
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, before commencing any such activity, obtain a license from the commissioner.

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 such a group is in a hazardous financial condition shall be enforceable in the courts of the state.

The commissioner may establish and from time to
time amend such rules relating to risk retention groups
as may be necessary or desirable to carry out the
provisions of this article.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within............. approved............. this the.............

day of............., 1987.

Governor