

304.45-020 Definitions for subtitle. (Effective January 1, 2018)

As used in this subtitle:

- (1) "Board of directors" or "board" means the governing body of a risk retention group elected by its owners to establish policy, elect or appoint officers and committees, and make other governing decisions;
- (2) "Commissioner" means the commissioner of the Kentucky Department of Insurance or the insurance supervisor of another state;
- (3) "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;
- (4) "Director" means a natural person designated in the articles of a risk retention group, or designated, elected, or appointed by any other manner, name, or title to act as a director;
- (5) "Domicile," for the 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;
- (6) "Hazardous financial condition" means a condition in which, 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;
- (7) "Insurance" means primary insurance, excess insurance, reinsurance, surplus lines insurance, and any other arrangement for shifting and distributing risks which is determined to be insurance under the laws of this state;
- (8) "Liability":
 - (a) 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 those other persons resulting from or arising out of:
 1. Any business (whether profit or nonprofit), trade, product, services (including professional services), premises, or operations; or
 2. Any activity of any state or local government, or any agency or political subdivision thereof; but
 - (b) Does not include personal risk liability or an employer's liability with respect to its employees other than legal liability under the Federal Employers' Liability Act (45 U.S.C. secs. 51 et seq.);
- (9) "Material relationship" includes but is not limited to:

- (a) The receipt in any one (1) twelve (12) month period by a person, a member of the person's immediate family, or any business with which the person is affiliated of compensation or payment of any other item of value from the risk retention group or a consultant or service provider to the risk retention group that exceeds or equals the greater of the following, as measured at the end of any fiscal quarter falling in the twelve (12) month period:
 - 1. Five percent (5%) of the risk retention group's gross written premium for the twelve (12) month period; or
 - 2. Two percent (2%) of the risk retention group's surplus for the twelve (12) month period;
 - (b) A director or 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; or
 - (c) A director or 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;
- (10) "Material service provider contract" means a contract between a risk retention group and a service provider where the amount to be paid for the contract exceeds or equals the greater of the following:
- (a) Five percent (5%) of the risk retention group's annual gross written premium; or
 - (b) Two percent (2%) of the risk retention group's surplus;
- (11) "Personal risk liability" means liability for damages because of injury to any person, damage to property, or other loss or damage arising from any personal, familial, or household responsibilities or activities, rather than from responsibilities or activities referred to in subsection (8) of this section;
- (12) "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 its 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 system for each kind 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 that 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 claim procedures, marketing methods, managerial oversight methods, and investment policies; and
 - (g) Any 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;
- (13) "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 that person when the incident giving rise to the claim occurred;
- (14) "Purchasing group" means any group which:
- (a) Has as one (1) of its purposes the purchase of liability insurance on a group basis;
 - (b) Purchases that insurance only for its group members and only to cover their similar or related liability exposure, as described in paragraph (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;
- (15) "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;
 - (c) Which:
 - 1. 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
 - 2. Before January 1, 1985, was chartered or licensed and authorized to engage in the business of insurance under the laws of Bermuda or the Cayman Islands and, before that date, had certified to the commissioner of at least one (1) state that it satisfied the capitalization requirements of that state, except that any group shall be considered to be a risk retention group only if it has 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 under the Product Liability Risk Retention Act of 1981 prior to the date of the

- enactment of the Liability Risk Retention Act of 1986);
- (d) Which does not exclude any person from membership in the group solely to provide for members of the group a competitive advantage over that person;
 - (e) Which:
 - 1. Has as its owners only persons who comprise the membership of the risk retention group and who are provided insurance by the group; or
 - 2. Has as its sole owner an organization which has as its members only persons who comprise the membership of the risk retention group and as its owners only persons who comprise the membership of the risk retention group and who are provided insurance by the group;
 - (f) Whose members are engaged in businesses or activities similar or related with respect to the liability to which the members are exposed by virtue of any related, similar, or common business, trade, product, services, premises, or operations; and
 - (g) Whose activities do not include the provision of insurance other than:
 - 1. Liability insurance for assuming and spreading all or any portion of the liability of its group members; and
 - 2. Reinsurance with respect to the liability of any other risk retention group or any members of the other group which is engaged in businesses or activities so that the group or member meets the requirement described in paragraph (f) of this subsection from membership in the risk retention group and which provides the reinsurance; and
 - (h) The name of which includes the phrase "risk retention group"; and
- (16) "State" means any state of the United States or the District of Columbia.

Effective: January 1, 2018

History: Amended 2017 Ky. Acts ch. 16, sec. 2, effective January 1, 2018. -- Amended 2010 Ky. Acts ch. 24, sec. 1573, effective July 15, 2010. -- Amended 1990 Ky. Acts ch. 165, sec. 2, effective July 13, 1990. -- Created 1986 Ky. Acts ch. 308, sec. 2, effective July 15, 1986.

Legislative Research Commission Note (1/1/2018). Under the authority of KRS 7.136(1)(h), a reference to "subsection (6) of this section" in subsection (11) of this statute has been changed to "subsection (8) of this section" by the Reviser of Statutes following the enactment of 2017 Ky. Acts ch. 16, sec. 2, which inserted new subsections into KRS 304.45-020 and renumbered the subsequent subsections, but overlooked the internal reference in the existing language.