

**304.45-040 Requirements for doing business -- Exemptions. (Effective January 1, 2018)**

Risk retention groups chartered and licensed in states other than this state and seeking to do business as a risk retention group in this state shall 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 and licensing, 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 KRS 304.45-020(15);
  - (b) A copy of its plan of operation or a feasibility study and revisions of the plan or study submitted to its state of domicile, but the provision relating to the submission of a plan of operation or a feasibility study shall not apply as to any kind or classification of liability insurance which was defined in the Product Liability Risk Retention Act of 1981 before October 27, 1986, and was offered before that date by any risk retention group which had been chartered and operating for not less than three (3) years at that time; and
  - (c) A statement of registration which designates the Secretary of State 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 the state in which the risk retention group is chartered 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 National Association of Insurance Commissioners;
  - (b) A copy of each financial, market conduct, or other 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 KRS 304.45-020(15).
- (3) A risk retention group shall, within ten (10) days, notify the commissioner of any changes in any of the information required in subsections (1) and (2) of this section.
- (4) Any risk retention group shall submit to an examination by the commissioner to determine its financial condition if the commissioner of the jurisdiction in which the group is chartered and licensed has not initiated an examination or does not initiate an examination within sixty (60) days after a request by the

commissioner of this state. Any 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. The examinations shall be conducted in accordance with KRS 304.2-210 to 304.2-300.

- (5) Any application used or any policy issued by a risk retention group shall contain in ten (10) point boldface type the following legend:

**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.

- (6) In the solicitation or sale of insurance, a risk retention group shall not:
- (a) Solicit or sell insurance to any person who is not eligible for membership in the group; and
  - (b) Solicit or sell insurance issued by, or otherwise operate, a risk retention group that is in a hazardous financial condition or is financially impaired.
- (7) 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, except if all members of the risk retention group are insurance companies.
- (8) A risk retention group shall not offer insurance policy coverage prohibited by statute or regulation or declared unlawful by the highest court of this state.
- (9) 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 commissioner if there has been a finding of financial impairment after an examination under subsection (4) of this section.
- (10) A risk retention group registered in this state as a product liability risk retention group under the provisions of KRS Chapter 304 in effect prior to July 13, 1990, may continue to act as one without complying with this subtitle as long as it complies with the provisions of KRS Chapter 304 in effect prior to July 13, 1990. The exception provided in this subsection shall cease to apply to any product liability risk retention group which offers kinds of liability insurance other than product liability or completed operations liability insurance.

**Effective:** January 1, 2018

**History:** Amended 2017 Ky. Acts ch. 16, sec. 4, effective January 1, 2018. -- Amended 2010 Ky. Acts ch. 24, sec. 1575, effective July 15, 2010. -- Amended 1994 Ky. Acts ch. 92, sec. 8, effective July 15, 1994. -- Amended 1990 Ky. Acts ch. 165, sec. 4, effective July 13, 1990. -- Created 1986 Ky. Acts ch. 308, sec. 4, effective July 15, 1986.