

CHAPTER 26.1-46
RISK RETENTION GROUPS AND PURCHASING GROUPS

26.1-46-01. Definitions.

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

1. "Commissioner" means the North Dakota insurance commissioner 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 any person who performs that work or any person who hires an independent contractor to perform that work, but includes 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 or limited liability company, the state in which the purchasing group is incorporated or organized.
 - b. For an entity which is not a corporation or limited liability company, 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 to do either of the following:
 - a. To meet obligations to policyholders with respect to known claims and reasonably anticipated claims.
 - 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 either of the following:
 - a. Any business whether profit or nonprofit, trade, product, services including professional services, premises, or operations.
 - b. Any activity of any state or local government, or any agency or political subdivision thereof.

The term does not include personal risk liability and an employer's liability with respect to its employees other than legal liability under the federal Employer's 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 5.
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, all of the following:
 - a. For each state in which it intends to operate, 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 to the extent that this experience is reasonably available.
 - 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 and claims procedures, marketing methods, managerial oversight methods, reinsurance agreements, and investment policies.
 - f. 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.
 - g. 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.
 - h. Identification of each state in which the risk retention group has obtained, or sought to obtain, a charter and license, and a description of its status in each such 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 meets all of the following:
- a. The group has as one of its purposes the purchase of liability insurance on a group basis.
 - b. The group purchases such insurance only for its group members and only to cover their similar or related liability exposure, as described in subdivision c.
 - c. The group is composed of members whose business 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.
 - d. The group is domiciled in any state.
11. "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 subdivision a.
 - c. Which 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, 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 such terms were defined in the Product Liability Risk Retention Act of 1981 before 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 such a group a competitive advantage over such a person.
 - e. Which has as its owners only persons who comprise the membership of the risk retention group and who are provided insurance by such group, or has as its sole owner an organization which has as its members only persons who comprise the membership of the risk retention group and its owners only persons who comprise the membership of the risk retention group and who are provided insurance by such 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:
 - (1) Liability insurance for assuming and spreading all or any portion of the liability of its group members.
 - (2) Reinsurance with respect to the liability of any other risk retention group or any members of such other group which is engaged in business or activities so that the group or member meets the requirement described in subdivision f from membership in the risk retention group which provides such reinsurance.
 - 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.

26.1-46-02. 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 chapter, shall comply with all of the laws, rules, regulations, and requirements applicable to such insurers chartered and licensed in this state and with section 26.1-46-03 to the extent such requirements are not a limitation on laws, rules, regulations, or requirements of this state. Notwithstanding any other provision to the contrary, all risk retention groups chartered in this state shall file with the department and the national association of insurance commissioners an annual statement in a form prescribed by the national association of insurance commissioners and in diskette form, if required by the commissioner, and completed in accordance with its instructions and the national association of insurance commissioners accounting practices and procedures manual. Before it may offer insurance in any state, each risk retention group doing business in this state, except for a risk retention group chartered in this state which does business only in this state and which has fewer than twenty-six resident members or insureds, 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. Immediately upon receipt of an application for charter in this state, the risk retention group shall provide summary information concerning the filing to the national association of insurance commissioners, including the name of the risk retention group, the identity of the initial members of the group, the identity of the individuals who organized the group or who will provide administrative services or otherwise influence or control the activities of the group, the amount and nature of initial capitalization, the coverages to be afforded, and the states in which the group intends to operate. Upon receipt of this information, the commissioner shall forward the information to the national association of insurance commissioners. Providing notification to the national association of insurance commissioners is in addition to, and is not sufficient to satisfy, the requirements of this chapter.

26.1-46-03. Risk retention groups not chartered in this state - Requirements for operation.

Risk retention groups chartered 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. Notice of operations and designation of commissioner as agent. Before offering insurance in this state, a risk retention group shall submit to the commissioner on a form prescribed by the national association of insurance commissioners all of the following:
 - 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 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 subsection 11 of section 26.1-46-01.

- b. A copy of its plan of operation 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 does not apply with respect to any line 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 such date by any risk retention group which had been chartered and operating for not less than three years before such date.
 - c. The risk retention group shall submit a copy of any revision to its plan of operation or feasibility study required by section 26.1-46-02 at the same time that the revision is submitted to the commissioner of its chartering state.
 - d. A statement of registration, for which a filing fee must be determined by the commissioner, which designated the commissioner as its agent for the purpose of receiving service of legal documents or process.
- 2. Financial condition. Any risk retention group doing business in this state shall submit to the commissioner upon the commissioner's request all of the following:
 - a. A copy of the group's financial statement submitted to its state of domicile, which must 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 according to 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.
 - d. Such information as may be required to verify its continuing qualifications as a risk retention group under subsection 11 of section 26.1-46-01.
- 3. Taxation.
 - a. All premiums paid for coverages within this state to risk retention groups are subject to taxation at the same rate and subject to the same interest, fines, and penalties for nonpayment that are applicable to foreign-admitted insurers.
 - b. To the extent insurance producers are utilized, the insurance producers shall report and pay the taxes for the premiums for risks which the insurance producers have placed with or on behalf of a risk retention group not chartered in this state.
 - c. To the extent the insurance producers are not utilized or fail to pay the tax, each risk retention group shall pay the tax for risks insured within the state. Further, each risk retention group shall report all premiums paid to it for risks insured within the state.
 - d. This subsection does not apply to risk retention groups doing business in this state which have fewer than twenty-six resident members or insureds.
 - e. To the extent that insurance producers are utilized pursuant to section 26.1-46-11, each insurance producer shall keep a complete and separate record of all policies procured from each risk retention group, which record must be open to examination by the commissioner, as provided in sections 26.1-03-19.1 through 26.1-03-22. These records must, for each policy and each kind of insurance provided thereunder, include the limit of liability, the time period covered, the effective date, the name of the risk retention group which issued the policy, the gross premium charged, and the amount of return premiums, if any.
- 4. Compliance with prohibited practices chapter. Any risk retention group, its insurance producers and representatives, shall comply with chapter 26.1-04.
- 5. Examination regarding financial condition. 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 must be coordinated to avoid

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

6. Notice to purchasers. Any policy issued by a risk retention group must contain in ten-point type of 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.

7. Prohibited acts regarding solicitation or sale. The following acts by a risk retention group are prohibited:
 - a. The solicitation or sale of insurance by a risk retention group to any person who is not eligible for membership in such group.
 - 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.
8. Prohibition on ownership by an insurance company. No risk retention group may 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.
9. Delinquency proceedings. 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 subsection 4.
10. Any risk retention group, its insurance producers, and representatives shall comply with chapter 26.1-04. The terms of any insurance policy issued by any risk retention group may not provide, or be construed to provide, coverage prohibited generally by statute of this state or declared unlawful by the highest court of this state whose law applies to such policy.
11. A risk retention group that violates any provisions of this chapter will be subject to fines and penalties, including revocation of its right to do business in this state, applicable to licensed insurers generally. In addition to complying with the requirements of this section, any risk retention group operating in this state prior to enactment of this chapter, within thirty days after the effective date of this chapter, shall comply with the provision of subdivision a of subsection 1.

26.1-46-04. Compulsory associations.

1. No risk retention group may join or contribute financially to any insurance insolvency guaranty fund, or similar mechanism, in this state, nor may 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.
2. When a purchasing group obtains insurance covering its members' risks from an insurer not authorized in this state or a risk retention group, no such risks, wherever resided or located, may be covered by any insurance guaranty fund or similar mechanism in this state.
3. When a purchasing group obtains insurance covering its members' risks from an authorized insurer, only risks resident or located in this state may be covered by the state guaranty fund subject to chapter 26.1-42.1.

26.1-46-05. Countersignatures not required.

A policy of insurance issued to a risk retention group or any member of that group may not be required to be countersigned except as otherwise provided in section 26.1-11-07.

26.1-46-06. Purchasing groups - Exemption from certain laws relating to the group purchase of insurance.

A purchasing group and its insurer or insurers is subject to all applicable laws of this state, except that a purchasing group and its insurer or insurers are exempt, in regard to liability insurance for the purchasing group, from any law that would:

1. Prohibit the establishment of a purchasing group.
2. Make it unlawful for an insurer to provide or offer to provide insurance on a basis providing, 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.
3. Prohibit a purchasing group or its members from purchasing insurance on a group basis described in subsection 2.
4. Prohibit a purchasing group from obtaining insurance on a group basis because the group has not been in existence for a minimum period of time or because any member has not belonged to the group for a minimum period of time.
5. Require that a purchasing group must have a minimum number of members, common ownership or affiliation, or certain legal form.
6. Require that a certain percentage of a purchasing group must obtain insurance on a group basis.
7. Otherwise discriminate against a purchasing group or any of its members.
8. Require that any insurance policy issued to a purchasing group or any of its members be countersigned by an insurance producer residing in this state.

26.1-46-07. Notice and registration requirements of purchasing groups.

1. A purchasing group which intends to do business in this state shall, prior to doing business, furnish notice to the commissioner on forms prescribed by the national association of insurance commissioners which must do all of the following:
 - a. Identify the state in which the group is domiciled.
 - b. Identify all other states in which the group intends to do business.
 - c. Specify the lines and classifications of liability insurance which the purchasing group intends to purchase.
 - d. Identify the insurance company from which the group intends to purchase its insurance and the domicile of such company.
 - e. Specify the method by which, and the person or persons, if any, through whom insurance will be offered to its members whose risks are resident or located in this state.
 - f. Identify the principal place of business of the group.
 - g. Provide such other information as may be required by the commissioner to verify that the purchasing group is qualified under subsection 10 of section 26.1-46-01.
2. A purchasing group shall, within ten days, notify the commissioner of any changes in any of the items set forth in subsection 1.
3. The purchasing group shall register with and designate the insurance commissioner as its agent solely for the purpose of receiving service of legal documents or process, except that such requirements do not apply in the case of a purchasing group which only purchases insurance that was authorized under the federal Products Liability Risk Retention Act of 1981 to which all of the following apply:
 - a. The group was domiciled before April 1, 1986, and is domiciled on and after October 27, 1986, in any state of the United States.
 - b. Before October 27, 1986, the group purchased insurance from an insurance carrier licensed in any state and since October 27, 1986, the group purchased its insurance from an insurance carrier licensed in any state.
 - c. The group was a purchasing group under the requirements of the federal Product Liability Risk Retention Act of 1981 before October 27, 1986.
 - d. The group does not purchase insurance that was not authorized for purposes of an exemption under that Act, as in effect before October 27, 1986.

- e. Each purchasing group that is required to give notice pursuant to subsection 1 shall also furnish such information as may be required by the commissioner to verify that the entity qualifies as a purchasing group, determine where the purchasing group is located, and determine appropriate tax treatment.
- f. Any purchasing group which was doing business in this state prior to the enactment of this chapter shall, within thirty days after August 1, 1993, furnish notice to the commissioner pursuant to the provisions of subsection 1 and furnish such information as may be required pursuant to subsections 2 and 3.

26.1-46-08. Restrictions on insurance purchased by purchasing groups.

1. 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 insurance producer acting pursuant to the surplus lines laws and regulations of such state.
2. A purchasing group which obtains liability insurance from an insurer not admitted in this state or a risk retention group shall inform each of the members of the group which have a risk resident or located in this state that the risk is not protected by an insurance insolvency guaranty fund in this state, and that the risk retention group or insurer may not be subject to all insurance laws and rules of this state.
3. No purchasing group may purchase insurance providing for a deductible or self-insured retention applicable to the group as a whole; however, coverage may provide for a deductible or self-insured retention applicable to individual members.
4. Purchases of insurance by purchasing groups are subject to the same standards regarding aggregate limits which are applicable to all purchases of group insurance.

26.1-46-08.1. Purchasing group taxation.

Premium taxes and taxes on premiums paid for coverage of risks resident or located in this state by a purchasing group or any members of the purchasing group must be:

1. Imposed at the same rate and subject to the same interest, fines, and penalties as that applicable to premium taxes and taxes on premiums paid for similar coverage from a similar insurance source by other insureds; and
2. Paid first by such insurance source, and if not by such source, by the insurance producer for the purchasing group, and if not by such insurance producer, then by the purchasing group, and if not by such purchasing group, then by each of its members.

26.1-46-09. Administrative and procedural authority regarding risk retention groups and purchasing groups.

The commissioner is authorized to make use of any of the powers and requirements established under title 26.1 so long as those powers or requirements are not specifically preempted by the federal Product Liability Risk Retention Act of 1981, as amended by the Risk Retention Amendments of 1986. This includes the commissioner's administrative authority to investigate, issue subpoenas, conduct depositions and hearings, issue orders, impose penalties, and seek injunctive relief. 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 requirements that any injunction be issued by a court of competent jurisdiction.

26.1-46-10. Penalties.

A risk retention group which violates any provision of this chapter is subject to fines and penalties applicable to licensed insurers generally, including revocation of its certificate of authority to do business in this state.

26.1-46-11. Duty of insurance producers to obtain license.

Any person acting, or offering to act, as an insurance producer 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. This section does not apply to any person acting as an insurance producer for a risk retention group doing business in this state which has fewer than twenty-six resident members or insureds.

26.1-46-12. Binding effect of orders issued in United States district court.

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 is enforceable in the courts of the state.

26.1-46-13. Rules and regulations.

The commissioner may adopt such rules relating to risk retention groups as may be necessary or desirable to carry out the provisions of the chapter.