

Subsec. (a)(4). Pub. L. 99-563, §4(a)(1), struck out “taxable as a corporation, or as an insurance company, formed under the laws of any State, Bermuda, or the Cayman Islands” after “association” in introductory provisions.

Subsec. (a)(4)(A). Pub. L. 99-563, §4(a)(2), substituted “liability exposure” for “product liability or completed operations liability risk exposure”.

Subsec. (a)(4)(C). Pub. L. 99-563, §4(a)(3), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: “which is chartered or licensed as an insurance company and authorized to engage in the business of insurance under the laws of any State, or which is so chartered or licensed and authorized before January 1, 1985, under the laws of Bermuda or the Cayman Islands, except that any group so chartered or licensed and authorized under the laws of Bermuda or the Cayman Islands shall be considered to be a risk retention group only after it has certified to the insurance commissioner of at least one State that it satisfies the capitalization requirements of such State;”.

Subsec. (a)(4)(E) to (H). Pub. L. 99-563, §4(a)(4), added subpars. (E) to (H), and struck out former subpar. (E) which read as follows: “which is composed of member each of whose principal activity consists of the manufacture, design, importation, distribution, packaging, labeling, lease, or sale of a product or products;”.

Subsec. (a)(5). Pub. L. 99-563, §4(b), amended par. (5) generally. Prior to amendment, par. (5) read as follows: “‘purchasing group’ means any group of persons which has as one of its purposes the purchase of product liability or completed operations liability insurance on a group basis;”.

Subsec. (a)(7). Pub. L. 99-563, §3(b), added par. (7).

Subsec. (b). Pub. L. 99-563, §12(b), substituted “liability, personal risk liability, and insurance” for “product liability and product liability insurance”.

1983—Subsec. (b). Pub. L. 98-193 substituted provision that nothing in this chapter would be construed to affect either the tort law or the law governing the interpretation of insurance contracts of any State, and that the definitions of product liability and product liability insurance under any State law would not be applied for the purposes of this chapter, including recognition or qualification of risk retention groups or purchasing groups for provision that the definition of product liability in this section would not be construed to affect either the tort law or the law governing the interpretation of insurance contracts of any State.

EFFECTIVE DATE OF 1986 AMENDMENT; APPLICABILITY

Pub. L. 99-563, §11(a), (b), and (c)(2), Oct. 27, 1986, 100 Stat. 3177, provided that:

“(a) GENERAL RULE.—Subject to subsection (b), this Act [see Short Title of 1986 Amendment note below] shall take effect on the date of its enactment [Oct. 27, 1986].

“(b) SPECIAL RULE REGARDING FEASIBILITY STUDY.—The provisions of section 3(d) of the Liability Risk Retention Act of 1986 (as added by section 5(b) of this Act) [15 U.S.C. 3902(d)], relating to the submission of a feasibility study, shall not apply with respect to any line or classification of liability insurance which—

“(1) was defined in the Product Liability Risk Retention Act of 1981 [Pub. L. 97-45, which enacted this chapter] before the date of the enactment of this Act [Oct. 27, 1986]; and

“(2) was offered before such date of enactment by any risk retention group which has been chartered and operating for not less than 3 years before such date of enactment.

“(c) RULE REGARDING POLLUTION LIABILITY.—

“(2) Nothing in this Act shall be construed, interpreted or applied to diminish the obligations of any person to establish or maintain evidence of financial responsibility or otherwise comply with any of the requirements of Federal environmental laws, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 [42 U.S.C. 9601 et seq.] and the Solid Waste Disposal Act [42 U.S.C. 6901 et seq.]”.

SHORT TITLE OF 1986 AMENDMENT

Pub. L. 99-563, §1, Oct. 27, 1986, 100 Stat. 3170, provided that: “This Act [enacting sections 3905 and 3906 of this title, amending this section, sections 3902 and 3903 of this title, and sections 9671 to 9675 of Title 42, The Public Health and Welfare, enacting provisions set out as notes under this section and section 9671 of Title 42, and amending provisions set out as a note under this section] may be cited as the ‘Risk Retention Amendments of 1986.’”

SHORT TITLE

Pub. L. 97-45, §1, Sept. 25, 1981, 95 Stat. 949, as amended by Pub. L. 99-563, §12(a), Oct. 27, 1986, 100 Stat. 3177, provided that: “This Act [enacting this chapter] may be cited as the ‘Liability Risk Retention Act of 1986.’”

OVERSIGHT OF IMPLEMENTATION; REPORT TO CONGRESS

Pub. L. 99-563, §10, Oct. 27, 1986, 100 Stat. 3176, provided that:

“(a) IN GENERAL.—(1) Not later than September 1, 1987, and not later than September 1, 1989, the Secretary of Commerce shall submit reports to the Congress concerning implementation of this Act [see Short Title of 1986 Amendment note above].

“(2) Such report shall be based on—

“(A) the Secretary’s consultation with State insurance commissioners, risk retention groups, purchasing groups, and other interested parties; and

“(B) the Secretary’s analysis of other information available to the Secretary.

“(b) CONTENTS OF THE REPORT.—The report shall describe the Secretary’s views concerning—

“(1) the contribution of this Act [see Short Title of 1986 Amendment note above] toward resolution of problems relating to the unavailability and unaffordability of liability insurance;

“(2) the extent to which the structure of regulation and preemption established by this Act is satisfactory;

“(3) the extent to which, in the implementation of this Act, the public is protected from unsound financial practices and other commercial abuses involving risk retention groups and purchasing groups;

“(4) the causes of any financial difficulties of risk retention groups and purchasing groups;

“(5) the extent to which risk retention groups and purchasing groups have been discriminated against under State laws, practices, and procedures contrary to the provisions and underlying policy of this Act and the Product Liability Risk Retention Act (as amended by this Act) [Pub. L. 97-45, which enacted this chapter]; and

“(6) such other comments and conclusions as the Secretary deems relevant to assessment of the implementation of this Act.”

§ 3902. Risk retention groups

(a) Exemptions from State laws, rules, regulations, or orders

Except as provided in this section, a risk retention group is exempt from any State law, rule, regulation, or order to the extent that such law, rule, regulation, or order would—

(1) make unlawful, or regulate, directly or indirectly, the operation of a risk retention group except that the jurisdiction in which it is chartered may regulate the formation and operation of such a group and any State may require such a group to—

(A) comply with the unfair claim settlement practices law of the State;

(B) pay, on a nondiscriminatory basis, applicable premium and other taxes which are levied on admitted insurers and surplus lines insurers, brokers, or policyholders under the laws of the State;

(C) participate, on a nondiscriminatory basis, in any mechanism established or authorized under the law of the State for the equitable apportionment among insurers of liability insurance losses and expenses incurred on policies written through such mechanism;

(D) register with and designate the State insurance commissioner as its agent solely for the purpose of receiving service of legal documents or process;

(E) submit to an examination by the State insurance commissioners in any State in which the group is doing business to determine the group's financial condition, if—

(i) the commissioner of the jurisdiction in which the group is chartered has not begun or has refused to initiate an examination of the group; and

(ii) any such examination shall be coordinated to avoid unjustified duplication and unjustified repetition;

(F) comply with a lawful order issued—

(i) in a delinquency proceeding commenced by the State insurance commissioner if there has been a finding of financial impairment under subparagraph (E); or

(ii) in a voluntary dissolution proceeding;

(G) comply with any State law regarding deceptive, false, or fraudulent acts or practices, except that if the State seeks an injunction regarding the conduct described in this subparagraph, such injunction must be obtained from a court of competent jurisdiction;

(H) comply with an injunction issued by a court of competent jurisdiction, upon a petition by the State insurance commissioner alleging that the group is in hazardous financial condition or is financially impaired; and

(I) provide the following notice, in 10-point type, in any insurance policy issued by such group:

“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.”

(2) require or permit a risk retention group to participate in any insurance insolvency guaranty association to which an insurer licensed in the State is required to belong;

(3) require any insurance policy issued to a risk retention group or any member of the group to be countersigned by an insurance agent or broker residing in that State; or

(4) otherwise, discriminate against a risk retention group or any of its members, except that nothing in this section shall be construed to affect the applicability of State laws generally applicable to persons or corporations.

(b) Scope of exemptions

The exemptions specified in subsection (a) of this section apply to laws governing the insurance business pertaining to—

(1) liability insurance coverage provided by a risk retention group for—

(A) such group; or

(B) any person who is a member of such group;

(2) the sale of liability insurance coverage for a risk retention group; and

(3) the provision of—

(A) insurance related services;

(B) management, operations, and investment activities; or

(C) loss control and claims administration (including loss control and claims administration services for uninsured risks retained by any member of such group);

for a risk retention group or any member of such group with respect to liability for which the group provides insurance.

(c) Licensing of agents or brokers for risk retention groups

A State may require that a person acting, or offering to act, as an agent or broker for a risk retention group obtain a license from that State, except that a State may not impose any qualification or requirement which discriminates against a nonresident agent or broker.

(d) Documents for submission to State insurance commissioners

Each risk retention group shall submit—

(1) to the insurance commissioner of the State in which it is chartered—

(A) before it may offer insurance in any State, a plan of operation or a feasibility study which includes the coverages, deductibles, coverage limits, rates, and rating classification systems for each line of insurance the group intends to offer; and

(B) revisions of such plan or study if the group intends to offer any additional lines of liability insurance;

(2) to the insurance commissioner of each State in which it intends to do business, before it may offer insurance in such State—

(A) a copy of such plan or study (which shall include the name of the State in which it is chartered and its principal place of business); and

(B) a copy of any revisions to such plan or study, as provided in paragraph (1)(B) (which shall include any change in the designation of the State in which it is chartered); and

(3) to the insurance commissioner of each State in which it is doing business, a copy of the group's annual financial statement submitted to the State in which the group is chartered as an insurance company, which statement shall be certified by an independent public accountant and contain a statement of opinion on loss and loss adjustment expense reserves made by—

(A) a member of the American Academy of Actuaries, or

(B) a qualified loss reserve specialist.

(e) Power of courts to enjoin conduct

Nothing in this section shall be construed to affect the authority of any Federal or State court to enjoin—

(1) the solicitation or sale of insurance by a risk retention group to any person who is not eligible for membership in such group; or

(2) the solicitation or sale of insurance by, or operation of, a risk retention group that is in hazardous financial condition or is financially impaired.

(f) State powers to enforce State laws

(1) Subject to the provisions of subsection (a)(1)(G) of this section (relating to injunctions) and paragraph (2), nothing in this chapter shall be construed to affect the authority of any State to make use of any of its powers to enforce the laws of such State with respect to which a risk retention group is not exempt under this chapter.

(2) If a State seeks an injunction regarding the conduct described in paragraphs (1) and (2) of subsection (e) of this section, such injunction must be obtained from a Federal or State court of competent jurisdiction.

(g) States' authority to sue

Nothing in this chapter shall affect the authority of any State to bring an action in any Federal or State court.

(h) State authority to regulate or prohibit ownership interests in risk retention groups

Nothing in this chapter shall be construed to affect the authority of any State to regulate or prohibit the ownership interest in a risk retention group by an insurance company in that State, other than in the case of ownership interest in a risk retention group whose members are insurance companies.

(Pub. L. 97-45, § 3, Sept. 25, 1981, 95 Stat. 950; Pub. L. 99-563, §§ 5, 7, 8(a), 12(c), Oct. 27, 1986, 100 Stat. 3172, 3175, 3178.)

AMENDMENTS

1986—Subsec. (a)(1)(C). Pub. L. 99-563, § 12(c), struck out “product liability or completed operations” before “liability insurance losses”.

Subsec. (a)(1)(D). Pub. L. 99-563, § 5(b)(1), redesignated subpar. (E) as (D), substituted a semicolon for “, and, upon request, furnish such commissioner a copy of any financial report submitted by the risk retention group to the commissioners of the chartering or licensing jurisdiction;”, and struck out former subpar. (D) which read as follows: “submit to the appropriate authority reports and other information required of licensed insurers under the laws of a State relating solely to product liability or completed operations liability insurance losses and expenses;”.

Subsec. (a)(1)(E). Pub. L. 99-563, § 5(b)(1)(A), (c), redesignated subpar. (F) as (E), further redesignated cl. (ii) as (i), added cl. (ii), and struck out former cl. (i) which read as follows: “the commissioner has reason to believe the risk retention group is in a financially impaired condition; and”. Former subpar. (E) redesignated (D).

Subsec. (a)(1)(F). Pub. L. 99-563, § 5(b)(1)(A), (d), redesignated subpar. (G) as (F) and amended it generally. Prior to amendment, subpar. (F) read as follows: “comply with a lawful order issued in a delinquency proceeding commenced by the State insurance commissioner if the commissioner of the jurisdiction in which the group is chartered has failed to initiate such a proceeding after notice of a finding of financial impairment under subparagraph (F) of this paragraph;”. Former subpar. (F) redesignated (E).

Subsec. (a)(1)(G) to (I). Pub. L. 99-563, § 5(b)(1)(A), (e), added subpars. (G) to (I). Former subpar. (G) redesignated (F).

Subsec. (b). Pub. L. 99-563, § 5(a), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: “The exemptions specified in subsection (a) of this section apply to—

“(1) product liability or completed operations liability insurance coverage provided by a risk retention group for—

“(A) such group; or

“(B) any person who is a member of such group;

“(2) the sale of product liability or completed operations liability insurance coverage for a risk retention group; and

“(3) the provision of insurance related services or management services for a risk retention group or any member of such group.”

Subsecs. (d) to (h). Pub. L. 99-563, §§ 5(b)(2), 7, 8(a), added subsecs. (d) to (h).

SPECIAL RULE REGARDING FEASIBILITY STUDY

The provisions of subsec. (d) of this section, relating to the submission of a feasibility study, not applicable with respect to any line or classification of liability insurance which was defined in this chapter before Oct. 27, 1986, and was offered before such date by any risk retention group chartered and operating for not less than 3 years before such date, see section 11(b) of Pub. L. 99-563, set out as an Effective Date of 1986 Amendment; Applicability note under section 3901 of this title.

§ 3903. Purchasing groups

(a) Exemptions from State laws, rules, regulations, or orders

Except as provided in this section and section 3905 of this title, a purchasing group is exempt from any State law, rule, regulation, or order to the extent that such law, rule, regulation, or order 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 the group basis described in paragraph (2) of this subsection;

(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 a certain legal form;

(6) require that a certain percentage of a purchasing group must obtain insurance on a group basis;

(7) require that any insurance policy issued to a purchasing group or any members of the group be countersigned by an insurance agent or broker residing in that State; or

(8) otherwise discriminate against a purchasing group or any of its members.

(b) Scope of exemptions

The exemptions specified in subsection (a) of this section apply to—

(1) liability insurance provided to—