

(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—

- (A) a purchasing group; or
- (B) any person who is a member of a purchasing group; and
- (2) the provision of—
 - (A) liability coverage;
 - (B) insurance related services; or
 - (C) management services;

to a purchasing group or member of the group.

(c) Licensing of agents or brokers for purchasing groups

A State may require that a person acting, or offering to act, as an agent or broker for a purchasing 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) Notice to State insurance commissioners of intent to do business

(1) A purchasing group which intends to do business in any State shall furnish notice of such intention to the insurance commissioner of such State. Such notice—

- (A) shall identify the State in which such group is domiciled;
- (B) shall specify the lines and classifications of liability insurance which the purchasing group intends to purchase;
- (C) shall identify the insurance company from which the group intends to purchase insurance and the domicile of such company; and
- (D) shall identify the principal place of business of the group.

(2) Such purchasing group shall notify the commissioner of any such State as to any subsequent changes in any of the items provided in such notice.

(e) Designation of agent for service of documents and process

A purchasing group shall register with and designate the State insurance commissioner of each State in which it does business as its agent solely for the purpose of receiving service of legal documents or process, except that such requirement shall not apply in the case of a purchasing group—

- (1) which—
 - (A) was domiciled before April 1, 1986; and
 - (B) is domiciled on and after October 27, 1986;¹

in any State of the United States;

- (2) which—
 - (A) before September 25, 1981, purchased insurance from an insurance carrier licensed in any State; and
 - (B) since September 25, 1981, purchases its insurance from an insurance carrier licensed in any State;

(3) which was a purchasing group under the requirements of this chapter before October 27, 1986; and

(4) as long as such group does not purchase insurance that was not authorized for purposes of an exemption under this chapter as in effect before October 27, 1986.

(f) Purchases of insurance through licensed agents or brokers acting pursuant to surplus lines laws

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.

(g) State powers to enforce State laws

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 purchasing group is not exempt under this chapter.

(h) 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.

(Pub. L. 97-45, § 4, Sept. 25, 1981, 95 Stat. 951; Pub. L. 99-563, §§ 6, 8(b), 12(d), Oct. 27, 1986, 100 Stat. 3174, 3175, 3178.)

CODIFICATION

October 27, 1986, referred to in subsec. (e)(1)(B), was in the original “the date of the enactment of this Act” which was translated as meaning the date of the enactment of Pub. L. 99-563, which enacted subsec. (e), to reflect the probable intent of Congress.

AMENDMENTS

1986—Subsec. (a). Pub. L. 99-563, § 8(b)(1), inserted reference to section 3905 of this title.

Subsec. (b)(1). Pub. L. 99-563, § 12(d)(1), substituted “liability insurance” for “product liability or completed operations liability insurance, and comprehensive general liability insurance which includes either of these coverages.”

Subsec. (b)(2)(A). Pub. L. 99-563, § 12(d)(2), struck out “product liability or completed operations insurance, and comprehensive general” before “liability coverage”.

Subsecs. (d) to (h). Pub. L. 99-563, §§ 6, 8(b)(2), added subsecs. (d) to (h).

§ 3904. Securities laws

(a) Ownership interest of members in risk retention groups

The ownership interests of members in a risk retention group shall be—

- (1) considered to be exempted securities for purposes of section 5 of the Securities Act of 1933 [15 U.S.C. 77e] and for purposes of section 12 of the Securities Exchange Act of 1934 [15 U.S.C. 78l]; and
- (2) considered to be securities for purposes of the provisions of section 17 of the Securities Act of 1933 [15 U.S.C. 77q] and the provisions of section 10 of the Securities Exchange Act of 1934 [15 U.S.C. 78j].

(b) Investment companies

A risk retention group shall not be considered to be an investment company for purposes of the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.).

(c) State blue sky laws

The ownership interests of members in a risk retention group shall not be considered securities for purposes of any State blue sky law.

¹ See Codification note below.