

SUBCHAPTER IV—POLLUTION INSURANCE

§ 9671. Definitions

As used in this subchapter—

(1) Insurance

The term “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 applicable State or Federal law.

(2) Pollution liability

The term “pollution liability” means liability for injuries arising from the release of hazardous substances or pollutants or contaminants.

(3) Risk retention group

The term “risk retention group” means any corporation or other limited liability association taxable as a corporation, or as an insurance company, formed under the laws of any State—

(A) whose primary activity consists of assuming and spreading all, or any portion, of the pollution liability of its group members;

(B) which is organized for the primary purpose of conducting the activity described under subparagraph (A);

(C) which is chartered or licensed as an insurance company and authorized to engage in the business of insurance under the laws of any State; and

(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.

(4) Purchasing group

The term “purchasing group” means any group of persons which has as one of its purposes the purchase of pollution liability insurance on a group basis.

(5) State

The term “State” means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Marianas, and any other territory or possession over which the United States has jurisdiction.

(Pub. L. 96-510, title IV, §401, as added Pub. L. 99-499, title II, §210(a), formerly §210, Oct. 17, 1986, 100 Stat. 1716; renumbered §210(a), Pub. L. 99-563, §11(c)(1), Oct. 27, 1986, 100 Stat. 3177.)

STATE POWERS AND AUTHORITIES UNDER RISK
RETENTION AMENDMENTS OF 1986

Pub. L. 99-499, title II, §210(b), as added by Pub. L. 99-563, §11(c)(1), Oct. 27, 1986, 100 Stat. 3177, provided that: “For purposes of subsection (a) of this section [enacting this subchapter], the powers and authorities of States addressed by the Risk Retention Amendments of 1986 [Pub. L. 99-563, see Short Title of 1986 Amendment note set out under section 3901 of Title 15, Commerce and Trade] are in addition to those of this Act [see Short Title of 1986 Amendment note set out under section 9601 of this title].”

§ 9672. State laws; scope of subchapter

(a) State laws

Nothing in this subchapter shall be construed to affect either the tort law or the law governing the interpretation of insurance contracts of any State. The definitions of pollution liability and pollution liability insurance under any State law shall not be applied for the purposes of this subchapter, including recognition or qualification of risk retention groups or purchasing groups.

(b) Scope of subchapter

The authority to offer or to provide insurance under this subchapter shall be limited to coverage of pollution liability risks and this subchapter does not authorize a risk retention group or purchasing group to provide coverage of any other line of insurance.

(Pub. L. 96-510, title IV, §402, as added Pub. L. 99-499, title II, §210(a), formerly §210, Oct. 17, 1986, 100 Stat. 1716; renumbered §210(a), Pub. L. 99-563, §11(c)(1), Oct. 27, 1986, 100 Stat. 3177.)

§ 9673. Risk retention groups

(a) Exemption

Except as provided in this section, a risk retention group shall be exempt from the following:

(1) A State law, rule, or order which makes unlawful, or regulates, directly or indirectly, the operation of a risk retention group.

(2) A State law, rule, or order which requires or permits 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) A State law, rule, or order which requires 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 the State.

(4) A State law, rule, or order which otherwise discriminates against a risk retention group or any of its members.

(b) Exceptions**(1) State laws generally applicable**

Nothing in subsection (a) of this section shall be construed to affect the applicability of State laws generally applicable to persons or corporations. The State in which a risk retention group is chartered may regulate the formation and operation of the group.

(2) State regulations not subject to exemption

Subsection (a) of this section shall not apply to any State law which requires a risk retention group to do any of the following:

(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 line 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