

(b) Promulgation of rules

Nothing in this chapter shall be construed as granting the Secretary or any other Federal official any authority to promulgate rules of general application to regulate the production, transportation, storage, safety, use or pricing of methane as a transportation fuel or vehicles which use methane as a transportation fuel.

(Pub. L. 96-512, §11, Dec. 12, 1980, 94 Stat. 2833.)

CHAPTER 65—LIABILITY RISK RETENTION

Sec.	
3901.	Definitions.
3902.	Risk retention groups.
3903.	Purchasing groups.
3904.	Securities laws.
3905.	Clarification concerning permissible State authority.
3906.	Injunctive orders issued by United States district courts.

§ 3901. Definitions

(a) As used in this chapter—

(1) “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) “liability”—

(A) 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—

(i) any business (whether profit or non-profit), trade, product, services (including professional services), premises, or operations, or

(ii) any activity of any State or local government, or any agency or political subdivision thereof; and

(B) does not include personal risk liability and an employer's liability with respect to its employees other than legal liability under the Federal Employers' Liability Act (45 U.S.C. 51 et seq.);

(3) “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 paragraphs (2)(A) and (2)(B);

(4) “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 subparagraph (A);

(C) which—

(i) is chartered or licensed as a liability insurance company under the laws of a State and authorized to engage in the business of insurance under the laws of such State; or

(ii) 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 such 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 this section before October 27, 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—

(i) has as its owners only persons who comprise the membership of the risk retention group and who are provided insurance by such group; or

(ii) has as its sole owner an organization which has as—

(I) its members only persons who comprise the membership of the risk retention group; and

(II) 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 to 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—

(i) liability insurance for assuming and spreading all or any portion of the similar or related liability exposure of its group members; and

(ii) reinsurance with respect to the similar or related liability exposure of any other risk retention group (or any member of such other group) which is engaged in businesses or activities so that such group (or member) meets the requirement described in subparagraph (F) for membership in the risk retention group which provides such reinsurance; and

(H) the name of which includes the phrase “Risk Retention Group”.¹

(5) “purchasing group” means any group which—

(A) has as one of its purposes the purchase of liability insurance on a group basis;

(B) purchases such insurance only for its group members and only to cover their similar or related liability exposure, as described in subparagraph (C);

(C) is composed of members whose businesses or activities are similar or related

¹ So in original. The period probably should be a semicolon.

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; and
(D) is domiciled in any State;

(6) “State” means any State of the United States or the District of Columbia; and

(7) “hazardous financial condition” means that, based on its present or reasonably anticipated financial condition, a risk retention group is unlikely to be able—

(A) to meet obligations to policyholders with respect to known claims and reasonably anticipated claims; or

(B) to pay other obligations in the normal course of business.

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

(Pub. L. 97-45, §2, Sept. 25, 1981, 95 Stat. 949; Pub. L. 98-193, Dec. 1, 1983, 97 Stat. 1344; Pub. L. 99-563, §§3, 4, 12(b), Oct. 27, 1986, 100 Stat. 3170, 3171, 3177.)

REFERENCES IN TEXT

The Federal Employers’ Liability Act (45 U.S.C. 51 et seq.), referred to in subsec. (a)(2)(B), is act Apr. 22, 1908, ch. 149, 35 Stat. 65, as amended, which is classified generally to chapter 2 (§51 et seq.) of Title 45, Railroads. For complete classification of this Act to the Code, see Short Title note set out under section 51 of Title 45 and Tables.

CODIFICATION

October 27, 1986, referred to in subsec. (a)(4)(C)(ii), was in the original “the date of the enactment of the Risk Retention Act of 1986”, which was translated as meaning the date of enactment of the Risk Retention Amendments of 1986 to reflect the probable intent of Congress.

AMENDMENTS

1986—Subsec. (a)(1) to (3). Pub. L. 99-563, §3(a), redesignated par. (2) as (1), added pars. (2) and (3), and struck out former par. (1) defining completed operations liability, and former par. (3) defining product liability.

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) 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);