

STATE OF OKLAHOMA

2nd Session of the 49th Legislature (2004)

HOUSE BILL HB2142:

Hastings

AS INTRODUCED

An Act relating to insurance; amending 36 O.S. 2001, Sections 6453, 6455, 6456, 6457, 6458, 6459, as amended by Section 7, Chapter 150, O.S.L. 2003 and 6462 (36 O.S. Supp. 2003, Section 6459), which relate to the Oklahoma Risk Retention Act; modifying definitions; requiring revisions of plans to be filed; requiring certain records to contain certain information; prohibiting purchasing groups from providing insurance to certain persons; allowing purchasing groups to take certain actions; requiring certain information be contained in notice provided by purchasing groups; making standards applicable to purchasing groups; requiring license to conduct certain activities; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 36 O.S. 2001, Section 6453, is amended to read as follows:

Section 6453. As used in the Oklahoma Risk Retention Act:

1. "Commissioner" means the Insurance Commissioner of this state 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:

- a. any person who performs that work, or
- b. any person who hires an independent contractor to perform that work,

and shall include 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, the state in which the purchasing group is incorporated, and
- b. for an unincorporated entity, 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:

- 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;

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":

- a. means legal liability for damages, including but not limited to, 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:
 - (1) any business, trade, product, services, premises, or operations, or
 - (2) any activity of any state or local government, or any agency or political subdivision thereof, and
- b. does not include personal risk liability and the liability of an employer to employees, other than

legal liability under the Federal Employers' 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 paragraph 6 of this section;

8. "Plan of operation or feasibility study" means an analysis which presents the expected activities and results of a risk retention group including, but not limited to:

- a. 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 procedures, underwriting procedures, managerial oversight methods, investment policies, and reinsurance agreements,
- f. 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,

g. 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, and

h. 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;

9. "Product liability" means liability for damages because of any personal injury, death, emotional harm, consequential economic damage, or property damage, including but not limited to 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:

- a. has as one of its purposes the purchase of liability insurance on a group basis for its members to cover their similar or related liability exposure,
- b. is composed of members whose businesses 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, and
- c. is domiciled in any state;

11. "Risk retention group" means any corporation or other limited liability association formed under the laws of any state, Bermuda, or the Cayman Islands, to assume and spread all, or any portion of, the liability exposure of its group members, and which:

- a. (1) 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
- (2) 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 the federal Product Liability Risk Retention Act of 1981, before the date of the enactment of the federal Liability Risk Retention Act of 1986,
- b. does not exclude any person from membership in the group solely to provide for members of such group a competitive advantage over such person,
- c. (1) has as its members only persons who have an ownership interest in the group and who are provided insurance by the risk retention group, or
- (2) has as its sole member and sole owner an organization which is owned by persons who are provided insurance by the risk retention group,
- d. has as its members persons or organizations which 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,

e. does not provide insurance coverage other than:

(1) liability insurance for assuming and spreading all or any portion of the liability of its group members, and

(2) reinsurance with respect to the liability of any other risk retention group, or any members of such other group, and

f. the name of which includes the phrase, "Risk Retention Group"; and

12. "State" means any state of the United States or the District of Columbia.

SECTION 2. AMENDATORY 36 O.S. 2001, Section 6455, is amended to read as follows:

Section 6455. Risk retention groups chartered in states other than this state and seeking to do business as risk retention groups in this state shall observe and abide by the laws of this state as follows:

A. Before offering insurance in this state, a risk retention group shall submit to the Commissioner of this state:

1. A statement identifying the state or states in which the risk retention group is chartered and licensed as a liability insurance company, the 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 group is qualified to be licensed as a risk retention group;

2. 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 shall not apply with respect to any line or classification of liability insurance which:

- (a) was defined in the federal Product Liability Risk Retention Act of 1981 before October 27, 1986, and
- (b) was offered before such date by a risk retention group which had been chartered and operating for not less than three (3) years before such date; and

3. A statement of registration which designates the Commissioner of this state as its agent for the purpose of receiving service of legal documents or process.

B. Any risk retention group doing business in this state shall submit to the Commissioner of this state:

1. A copy of the group's financial statement submitted to its state of domicile, which shall be certified by an independent public accountant or certified 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 loss reserve specialist qualified pursuant to criteria established by the National Association of Insurance Commissioners;

2. A copy of each examination of the risk retention group as certified by a Commissioner or public official conducting the examination;

3. Upon request by the Commissioner of this state, a copy of any audit performed with respect to the risk retention group; and

4. Such information as may be required to verify its continuing qualification as a risk retention group.

C. 1. All premiums paid for coverages within this state to risk retention groups shall be subject to taxation at the same rate and subject to the same interest, fines, and penalties for nonpayment as that applicable to foreign admitted insurers.

2. To the extent agents or brokers are utilized, they shall report and pay the taxes for the premiums for risks which they have placed with or on behalf of a risk retention group not chartered in this state.

3. To the extent agents or brokers 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.

4. To the extent that insurance agents or brokers are utilized, such agent or broker shall keep a complete and separate record of all policies procured from each such risk retention group, which record must be open to examination by the director or a designee of the director or a representative of the director on demand. These records shall, for each policy and each kind of insurance provided thereunder, include the following:

- (a) the limit of liability,
- (b) the time period covered,
- (c) the effective date,
- (d) the name of the risk retention group which issued the policy,
- (e) the gross premium charged,
- (f) the amount of return premiums, if any, and
- (g) such additional information as the director or a designee of the director may require.

D. Any risk retention group, its agents and representatives shall comply with the provisions of the Claims Resolution Act.

E. Any risk retention group shall comply with the laws of this state regarding deceptive, false or fraudulent acts or practices. However, if the Commissioner of this state seeks an injunction regarding such conduct, the injunction shall be obtained from a court of competent jurisdiction.

F. Any risk retention group shall submit to an examination by the Commissioner of this state 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 (60) days after a request to do so is made by the Commissioner of this state. Any such examination shall be coordinated to avoid unjustified repetition of examination by Commissioners of other states and shall be conducted in an expeditious manner and in accordance with the National Association of Insurance Commissioner's Examiner Handbook.

G. Any policy issued by a risk retention group shall contain in ten-point type on 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.

H. The following acts by a risk retention group are hereby prohibited:

1. The solicitation or sale of insurance by a risk retention group to any person who is not eligible for membership in such group; and

2. 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.

I. No risk retention group shall 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.

J. No risk retention group shall offer insurance policy coverage prohibited by the Insurance Code or any other law of this state.

K. A risk retention group which is not chartered in this state but is doing business in this state shall comply with a lawful order issued in a voluntary dissolution proceeding or in a delinquency proceeding commenced by an Insurance Commissioner of any state if there has been a finding of financial impairment after an examination by any state Insurance Commissioner.

SECTION 3. AMENDATORY 36 O.S. 2001, Section 6456, is amended to read as follows:

Section 6456. A. No risk retention group shall be permitted to join or contribute financially to any insurance insolvency guaranty fund, or similar mechanism, in this state, nor shall 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.

B. When a purchasing group obtains insurance covering its members' risks from an approved surplus lines insurer not admitted in this state or a risk retention group, no such risks, wherever resident is located, may be covered by any insurance guaranty fund or similar mechanism in this state.

C. 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 Oklahoma Property and Casualty Insurance Guaranty Association.

SECTION 4. AMENDATORY 36 O.S. 2001, Section 6457, is amended to read as follows:

Section 6457. Any purchasing group meeting the criteria established pursuant to the provisions of the federal Liability Risk Retention Act of 1986 shall be exempt from any law of this state relating to the creation of groups for the purchase of insurance,

prohibition of group purchasing, or any law that would discriminate against a purchasing group or its members. In addition, an insurer shall be exempt from any law of this state which ~~prohibits~~:

1. Prohibits providing, or offering to provide, 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;

2. Prohibits a purchasing group or its members from purchasing insurance on a group basis described in paragraph 1 of this section;

3. Prohibits 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;

4. Requires that a purchasing group must have a minimum number of members, common ownership or affiliation, or certain legal form;

5. Requires that a certain percentage of a purchasing group must obtain insurance on a group basis;

6. Otherwise discriminates against a purchasing group or any of its members; or

7. Requires that any insurance policy issued to a purchasing group or any of its members be countersigned by an insurance agent or broker residing in this state.

A purchasing group shall be subject to all other applicable laws of this state.

SECTION 5. AMENDATORY 36 O.S. 2001, Section 6458, is amended to read as follows:

Section 6458. A. A purchasing group which intends to do business in this state shall furnish to the Commissioner of this state notice which shall:

1. Identify the state in which the group is domiciled;

2. Specify the lines and classifications of liability insurance which the purchasing group intends to purchase;

3. Identify the insurance company or risk retention group, if known, which is licensed in this state, from which the group intends to purchase its insurance;

4. Identify the principal place of business of the group; ~~and~~

5. Specify the method by which, and the person, if any, through whom insurance will be offered to its members whose risks are resident or located in this state; and

6. Provide such other information as may be required by the Commissioner of this state to verify that the purchasing group is qualified to do business in this state as a purchasing group.

B. The purchasing group shall register with and designate the Commissioner of this state as its agent solely for the purpose of receiving service of legal documents or process, except that such requirements shall not apply to a purchasing group domiciled before April 1, 1986, and domiciled on and after October 27, 1986, in any state, which:

~~a.~~

1. Before October 27, 1986, purchased insurance from an insurance carrier licensed in any state, ~~and~~ ;

~~b.~~

2. Since October 27, 1986, purchased its insurance from an insurance carrier licensed in any state, ~~and~~ ;

~~c.~~

3. Was a purchasing group pursuant to the requirements of the federal Product Liability Risk Retention Act of 1981 before October 27, 1986, ~~and~~ ; and

~~d.~~

4. Does not purchase insurance that was not authorized for purposes of an exemption pursuant to the federal Product Liability Risk Retention Act of 1981, as in effect before October 27, 1986.

C. Each purchasing group that is required to give notice pursuant to subsection A of this section also shall furnish such information as may be required by the director or designee to:

1. Verify that the entity qualifies as a purchasing group; and
2. Determine appropriate tax treatment.

SECTION 6. AMENDATORY 36 O.S. 2001, Section 6459, as amended by Section 7, Chapter 150, O.S.L. 2003 (36 O.S. Supp. 2003, Section 6459), is amended to read as follows:

Section 6459. A. A purchasing group shall not purchase insurance from a risk retention group that is not chartered in a state or from an insurer not licensed to transact insurance in this state, unless the purchase is effected through a licensed agent or broker acting pursuant to the surplus lines laws and regulations of this state.

B. A purchasing group which obtains liability insurance from an approved surplus lines insurer not admitted in this state or a risk retention group shall inform each of the members of the group which has 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 the insurer may not be subject to all insurance laws and regulations of this state.

C. 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.

D. Purchases of insurance by purchasing groups are subject to the same standards regarding aggregate limits which are applicable to all purchases of group insurance.

SECTION 7. AMENDATORY 36 O.S. 2001, Section 6462, is amended to read as follows:

Section 6462. A. Any person acting, or offering to act, as an agent or broker 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, before commencing any such activity, shall obtain a license from the Commissioner of this state.

B. 1. No person may act or aid in any manner in soliciting, negotiating, or procuring liability insurance in this state for a purchasing group from an authorized insurer or a risk retention group chartered in a state unless such person is licensed as an insurance agent for the insurer or risk retention group or is licensed as a broker.

2. No person may act or aid in any manner in soliciting, negotiating, or procuring liability insurance coverage in this state for any member of a purchasing group under a purchasing group's policy unless such person is licensed as an insurance agent for the insurer or is licensed as a broker.

3. No person may act or aid in any manner in soliciting, negotiating, or procuring liability insurance from an approved nonadmitted surplus lines insurer on behalf of a purchasing group located in this state unless such person is licensed as a broker.

C. For purposes of acting as an agent or broker for a risk retention group or purchasing group pursuant to subsections A and B of this section, the requirement of residence in this state does not apply.

D. Every person licensed as an agent or broker as required in this section, on business placed with risk retention groups or written through a purchasing group, shall inform each prospective insured of the provisions of the notice required by the Oklahoma Risk Retention Act.

SECTION 8. This act shall become effective November 1, 2004.

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