

barbershop or, a barber school, or a licensed beauty salon as defined in section 157.1 which has also been licensed as a barbershop, except that a licensed barber may practice barbering at a location which is not a licensed barbershop or barber school under extenuating circumstances arising from physical or mental disability or death of a customer. It is unlawful for a licensed barber to claim to be a licensed cosmetologist, but it is lawful for a licensed barber to work in a licensed beauty salon if the same premises are also licensed as a barbershop.

Approved April 26, 1988

CHAPTER 1111

NONTRADITIONAL INSURANCE ARRANGEMENT REGULATION

H.F. 2303

AN ACT relating to nontraditional insurance arrangements by prohibiting the incorporation or reincorporation of a benevolent association, providing for the regulation of risk retention groups and purchasing groups, increasing surplus requirements for reciprocal insurers and repealing an exemption to the applicability of state law to certain reciprocal insurance contracts, and providing penalties.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. NEW SECTION. 512A.9 INCORPORATION OF BENEVOLENT ASSOCIATIONS PROHIBITED.

Notwithstanding any provision of this chapter to the contrary, a benevolent association shall not be incorporated or reincorporated in this state on or after July 1, 1988. A benevolent association incorporated before July 1, 1988, continues to be subject to the provisions of this chapter.

Sec. 2. NEW SECTION. 515E.1 PURPOSE.

The purpose of this chapter is to regulate the formation and operation in this state of risk retention groups formed pursuant to the Product Liability Risk Retention Act of 1981, 15 U.S.C. § 3901 et seq., or the Risk Retention Amendments of 1986, Pub. L. No. 99-563. As used in this chapter, "federal Act" means the Product Liability Risk Retention Act of 1981 as amended.

Sec. 3. NEW SECTION. 515E.2 DEFINITIONS.

As used in this chapter, unless the context otherwise requires:

1. "Commissioner" means the commissioner of insurance or the commissioner, director, superintendent of insurance, or similar public official, 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 either of the following:

a. A person who performs that work.

b. A person who hires an independent contractor to perform that work.

However, liability for activities which are completed or abandoned before the date of the occurrence giving rise to the liability is included.

3. "Domicile", for purposes of determining the state in which a purchasing group is domiciled, means either of the following:

a. For a corporation, the state in which the purchasing group is incorporated.

b. For an unincorporated entity, the state of its principal place of business.

4. "Hazardous financial condition" means a risk retention group not yet financially impaired or insolvent, which, based on its present or reasonably anticipated financial condition, is unlikely to be able to do one of the following:

a. Meet obligations to policyholders with respect to known claims and reasonably anticipated claims.

b. 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" 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 other persons resulting from or arising out of either of the following:

a. A business, whether profit or nonprofit, trade, product, services, including professional services, premises, or operations.

b. An activity of a state or local government, or an agency or political subdivision of state or local government.

"Liability" does not include personal risk liability and an employer's liability with respect to its employees other than an employer's 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 a person, damage to property, or other loss or damage resulting from personal, familial, or household responsibilities or activities, rather than from responsibilities or activities referred to in subsection 6, paragraphs "a" and "b".

8. "Plan of operation or a feasibility study" means an analysis which presents the expected activities and results of a risk retention group including, at a minimum, all of the following:

a. 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.

b. For each state in which it intends to operate, the coverages, deductibles, coverage limits, rates, and rating classification systems for each line of insurance the group intends to offer.

c. Historical and expected loss experience of the proposed members and national experience of similar exposures.

d. Pro forma financial statements and projections.

e. 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.

f. Identification of management, underwriting and claim procedures, marketing methods, managerial oversight methods, investment policies, and reinsurance agreements.

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.

h. Other matters prescribed by the commissioner for liability insurance companies of the state in which the risk retention group is chartered or authorized by its insurance laws.

9. "Product liability" means liability for damages because of personal injury, death, emotional harm, consequential economic damage, or property damage, including 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 a person for those damages if the product involved was in the possession of the person when the incident giving rise to the claim occurred.

10. "Purchasing group" means a group to which all of the following apply:

a. It has as one of its purposes the purchase of liability insurance on a group basis.

b. It purchases such insurance only for its group members and only to cover their similar or related liability exposure, as described in paragraph "c".

c. It 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.

d. It is domiciled in any state.

11. "Risk retention group" means a corporation or other limited liability association formed under the laws of any state, Bermuda, or the Cayman Islands and to which all of the following apply:

a. Its primary activity consists of assuming and spreading all, or any portion, of the liability exposure of its group members.

b. It is organized for the primary purpose of conducting the activity described under paragraph "a".

c. One of the following applies:

(1) It is chartered and licensed as a liability insurance company and authorized to engage in the business of insurance under the laws of any state.

(2) Before January 1, 1985, it was chartered or licensed and authorized to engage in the business of insurance under the laws of Bermuda or the Cayman Islands and, before that date, had certified to the commissioner of at least one state that it satisfied the capitalization requirements of that state, except that any such group is a risk retention group only if it has been engaged in business continuously since that date and only for the purpose of continuing to provide insurance to cover product liability or completed operations liability, as those terms were defined in the Product Liability Risk Retention Act of 1981, 15 U.S.C. § 3901, before the date of the enactment of the Risk Retention Amendments of 1986, Pub. L. No. 99-563.

d. It does not exclude any person from membership in the group solely to provide for members of the group a competitive advantage over such a person.

e. One of the following applies:

(1) It has as its members only persons who have an ownership interest in the group, and as its owners only persons who are members and are provided insurance by the risk retention group.

(2) It has as its sole member and sole owner an organization which is owned by persons who are provided insurance by the risk retention group.

(3) It has as its sole owner an organization which has as its members only persons who comprise the membership of the risk retention group, and the organization members are the only persons who comprise the membership of the risk retention group and who are provided insurance by the group.

f. Its members are engaged in businesses or activities similar or related with respect to the liability to which the members are exposed by virtue of a related, similar, or common business trade, product, services, premises, or operations.

g. Its activities do not include the provision of insurance other than the following:

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

(2) Reinsurance with respect to the liability of any other risk retention group, or any members of another such group, which is engaged in businesses or activities so that the group or member meets the requirement described in paragraph "f" from membership in the risk retention group which provides the reinsurance.

h. Its name includes the phrase "risk retention group".

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

Sec. 4. NEW SECTION. 515E.3 RISK RETENTION GROUPS ORGANIZED IN THIS STATE.

To be organized as a risk retention group in this state, the group must be organized and licensed as a liability insurance company authorized by the insurance laws of this state. Except as provided elsewhere in this chapter, a risk retention group organized in this state must comply with all of the laws, rules, and requirements applicable to liability insurers organized in this state. Additionally, a risk retention group organized in this state must comply with section 515E.4. These requirements do not exempt risk retention groups from a duty imposed by any other law or rule of the state. Before it may offer insurance in any state, each risk retention group shall also submit for approval to the commissioner of insurance of this state a plan of operation or a feasibility study, and revisions of the plan or study within ten days of any change. The name under which a risk retention group may be chartered and licensed shall be a brief description of its membership followed by the phrase "risk retention group" and, unless its membership consists solely of insurers, shall not include the terms "insurance", "mutual", "reciprocal", or any similar term.

Sec. 5. NEW SECTION. 515E.4 RISK RETENTION GROUPS NOT ORGANIZED IN THIS STATE.

Risk retention groups chartered in other states and seeking to do business as a risk retention group in this state must observe and abide by the laws of this state as provided in this section.

However, a risk retention group failing to qualify under the definitional requirement of the federal Act, will not benefit from this exemption from state law. The commissioner, therefore, may apply any of the laws that otherwise may be preempted by the federal Act because the nonexempt group will not qualify for the preemption.

1. NOTICE OF OPERATIONS AND DESIGNATION OF COMMISSIONER AS AGENT. Before offering insurance in this state, a risk retention group shall submit to the commissioner all of the following:

a. A statement identifying the state or states in which the risk retention group is chartered and licensed as a liability insurance company, date of chartering, its principal place of business, and other information, including information on its membership, as the commissioner of this state requires to verify that the risk retention group is qualified under section 515E.2, subsection 11.

b. A copy of its plan of operations or a feasibility study and revisions of the plan or study submitted to its state of domicile. However, the provision relating to the submission of a plan of operation or a feasibility study does not apply with respect to a line or classification of liability insurance which was defined in the Product Liability Risk Retention Act of 1981 before October 27, 1986, and was offered before that date by a risk retention group which had been organized and operating for not less than three years before that date.

c. A statement of registration which designates the commissioner as its agent for the purpose of receiving service of legal documents or process for which a filing fee set by the commissioner shall be paid.

d. The risk retention group shall submit a copy of any revision to its plan of operation or feasibility study required by section 515E.3 at the same time that such revision is submitted to the commissioner of its chartering state.

2. FINANCIAL CONDITION. A risk retention group doing business in this state shall submit to the commissioner all of the following:

a. A copy of the group's financial statement submitted to its state of domicile, which shall be certified by an independent 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 qualified loss reserve specialist under criteria established by the national association of insurance commissioners.

b. A copy of each examination of the risk retention group as certified by the commissioner or public official conducting the examination.

c. Upon request by the commissioner, a copy of any audit performed with respect to the risk retention group.

d. Information required to verify its continuing qualification as a risk retention group under section 515E.2, subsection 11.

3. TAXATION.

a. Premiums paid for coverages within this state to risk retention groups are subject to taxation as provided in section 432.5.

b. To the extent agents or brokers are used, 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.

c. To the extent agents or brokers are not used or fail to pay the tax, each risk retention group shall pay the tax for risks insured within the state. Each risk retention group shall report all premiums paid to it for risks insured within the state.

4. COMPLIANCE WITH UNFAIR CLAIMS SETTLEMENT PRACTICES LAW. A risk retention group, its agents, and representatives, shall comply with the unfair claims settlement practices law in section 507B.4, subsection 9.

5. DECEPTIVE, FALSE, OR FRAUDULENT PRACTICES. A risk retention group shall comply with sections 507B.3 and 507B.4 regarding deceptive, false, or fraudulent acts or practices. However, if the commissioner seeks an injunction regarding such conduct, the injunction must be obtained from a court of competent jurisdiction.

6. EXAMINATION REGARDING FINANCIAL CONDITION. A risk retention group shall submit to an examination by the commissioner 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 days after a request by the commissioner of this state. Any such examination shall be coordinated to avoid unjustified repetition and conducted in an expeditious manner and in accordance with the national association of insurance commissioners' examiner handbook.

7. NOTICE TO PURCHASERS. Every application form for insurance from a risk retention agency and every 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.

8. PROHIBITED ACTS REGARDING SOLICITATION OR SALE. The following acts by a risk retention group are prohibited:

a. The solicitation or sale of insurance by a risk retention group to a person who is not eligible for membership in the group.

b. 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.

9. PROHIBITION AGAINST OWNERSHIP BY AN INSURANCE COMPANY. A risk retention group shall not be allowed to do business in this state if an insurance company is directly or indirectly a member or owner of the risk retention group, other than in the case of a risk retention group all of whose members are insurance companies.

10. **PROHIBITED COVERAGE.** A risk retention group shall not offer insurance policy coverage prohibited by law or declared unlawful by the highest court of this state.

11. **DELINQUENCY PROCEEDINGS.** A risk retention group not chartered in this state and doing business in this state shall comply with a lawful order issued in a voluntary dissolution proceeding or in a delinquency proceeding commenced by a state insurance commissioner if there has been a finding of financial impairment after an examination under subsection 6.

Sec. 6. **NEW SECTION. 515E.5 COMPULSORY ASSOCIATIONS.**

A risk retention group shall not join or contribute financially to an insurance insolvency guaranty fund, or similar mechanism, in this state, nor shall a risk retention group, or its insureds, receive any benefit from an insurance insolvency guaranty fund, or similar mechanism, in this state, for claims arising out of the operations of the risk retention group.

Sec. 7. **NEW SECTION. 515E.6 COUNTERSIGNATURES NOT REQUIRED.**

A policy of insurance issued to a risk retention group or a member of that group is not required to be countersigned as otherwise provided in sections 515.22 and 515.52.

Sec. 8. **NEW SECTION. 515E.7 PURCHASING GROUPS EXEMPTIONS.**

A purchasing group which meets the criteria established under the federal Act is exempt from any law of this state relating to the creation of groups for the purchase of insurance, the prohibition of group purchasing, the countersignature requirement as provided in sections 515.22 and 515.52, or any law that would discriminate against a purchasing group or its members. An insurer is exempt from any law of this state which 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. A purchasing group is subject to all other applicable laws.

Sec. 9. **NEW SECTION. 515E.8 PURCHASING GROUPS — REQUIREMENTS.**

1. A purchasing group which intends to do business in this state shall, prior to doing business, furnish notice to the commissioner which notice shall include all of the following:

- a. The state in which the group is domiciled and all states in which the group does or intends to do business.
- b. The lines and classifications of liability insurance which the purchasing group intends to purchase.
- c. The insurance company from which the group intends to purchase its insurance and the domicile of that company.
- d. The principal place of business of the group.
- e. The method by which, and the person or persons, if any, through whom insurance will be offered to its members whose risks are resident or located in this state.
- f. Other information as required by the commissioner to verify that the purchasing group is qualified under section 515E.2, subsection 10.

2. A purchasing group, within ten days of any changes in any of the items set forth in subsection 1, shall notify the commissioner of the changes.

3. The purchasing group shall register with and designate the commissioner as its agent solely for the purpose of receiving service of legal documents or process, for which a filing fee determined by the commissioner shall be paid, except that the requirements do not apply in the case of a purchasing group to which all of the following apply:

- a. It was domiciled before April 2, 1986 and is domiciled on and after October 27, 1986, in any state of the United States.
- b. Before and since October 27, 1986, it purchased insurance from an insurance carrier licensed in any state.

c. It was a purchasing group under the requirements of the Product Liability* Retention Act of 1981 before October 27, 1986.

d. It does not purchase insurance that was not authorized for purposes of an exemption under that Act, as in effect before October 27, 1986.

Sec. 10. NEW SECTION. 515E.9 PURCHASING GROUP RESTRICTIONS.

A purchasing group shall not purchase insurance from a risk retention group or from an insurer unless one or more of the following conditions apply:

1. The risk retention group is licensed or organized in a state in which the purchasing group is located.

2. The insurer is admitted in the state in which the purchasing group is located.

3. The purchase is effected through a licensed agent or broker acting pursuant to the surplus lines laws and rules of the state in which the purchasing group is located, regardless of whether the insurer is admitted in that state or the risk retention group is licensed or organized in that state.

4. A purchasing group which obtains liability insurance from an insurer not admitted in this state or a risk retention group shall inform each of the members of the group, which have 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 insurer may not be subject to all insurance laws and regulations of this state. A purchasing group shall not purchase insurance providing for a deductible or self-insured retention, unless the deductible or self-insured retention is applicable to individual members of the purchasing group.

Sec. 11. NEW SECTION. 515E.10 COMMISSIONER'S ADMINISTRATIVE AND PROCEDURAL AUTHORITY.

The commissioner may make use of any of the powers established under the laws of this state to enforce the laws of this state so long as those powers are not specifically preempted by the federal Act, including but not limited to, the commissioner's authority to investigate, issue subpoenas, conduct depositions and hearings, issue orders, impose penalties, and seek injunctive relief. With regard to an investigation, administrative proceeding, or litigation, the commissioner may rely on the procedural law and rules of the state.

Sec. 12. NEW SECTION. 515E.11 PENALTIES.

A risk retention group which violates a provision of this chapter is subject to fines and penalties applicable to licensed insurers generally, including revocation of the group's license and of the right to do business in this state.

Sec. 13. NEW SECTION. 515E.12 LICENSE REQUIRED FOR AGENTS AND BROKERS.

A person acting, or offering to act, as an agent or broker for a risk retention group or purchasing group, which solicits members, sells or procures insurance coverage, purchases coverage for its members located within the state, or otherwise does business in this state shall, before commencing any such activity, obtain a license from the commissioner.

Sec. 14. NEW SECTION. 515E.13 EFFECT OF FEDERAL DISTRICT COURT ORDERS.

An order issued by a district court of the United States enjoining a risk retention group from soliciting or selling insurance, or operating, in any state, or in all states, or in any territory or possession of the United States, upon a finding that such a group is in a hazardous or impaired financial condition, is enforceable in the courts of this state.

Sec. 15. NEW SECTION. 515E.14 RULES.

The commissioner may establish and from time to time amend rules relating to risk retention groups as necessary or desirable to carry out the provisions of this chapter.

*"Risk" Retention Act probably intended.

Sec. 16. Section 520.9, Code 1987, is amended to read as follows:
520.9 STANDARD OF SOLVENCY.

There shall at all times be maintained as assets a sum in cash, or in securities of the kind designated by the laws of the state where the principal office is located for the investment of funds of insurance companies, equal to one hundred percent of the net unearned premiums or deposits collected and credited to the account of subscribers, or assets equal to fifty percent of the net annual deposits collected and credited to the account of subscribers on policies having one year or less to run and pro rata on those for longer periods; in addition to which there shall be maintained in cash, or in such securities, assets sufficient to discharge all liabilities on all outstanding losses arising under policies issued, the same to be calculated in accordance with the laws of the state relating to similar reserves for companies insuring similar risks; provided that where the assets on hand available for the payment of losses other than determined losses, ~~shall do not equal three hundred thousand two million~~ dollars, all liability for each determined loss or claim deferred for more than one year, shall be provided for by a special deposit in a trust company or bank having fiduciary powers of the state in which the principal office is located, to be used in payment of compensation benefits for disability; such deposit to be a trust fund and applicable only to the purposes stated, or such liability may be reinsured in authorized companies with a surplus of at least ~~three hundred thousand two million~~ dollars. For the purpose of ~~said such~~ reserves, net deposits shall be construed to mean the advance payments of subscribers after deducting ~~therefrom~~ the amount specifically provided in the subscribers' agreements for expenses. If at any time the assets so held in cash or such securities shall be less than required above, or less than ~~three hundred thousand two million~~ dollars, the subscribers or their attorney for them shall make up the deficiency within ~~thirty~~ days after notice from the commissioner of insurance ~~so to do so~~. In computing the assets required by this section, the amount specified in ~~subsection 7, section 520.4, subsection 7,~~ shall be included.

Sec. 17. NEW SECTION. 520.9A SOLVENCY STANDARD — TRANSITION.

Notwithstanding section 520.9, a reciprocal or interinsurance insurer authorized to transact business in this state prior to July 1, 1988, may continue in operation provided that the insurer contributes an additional ten percent of the previous year ending capital and surplus to capital and surplus each year. If an insurer fails to contribute the additional ten percent, the commissioner of insurance may revoke the insurer's authorization to do business in this state. The insurance commissioner may waive this requirement for just cause shown.

Sec. 18. Section 520.22, Code 1987, is repealed.

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