

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. *a.* “*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:
 - (1) A person who performs that work.
 - (2) A person who hires an independent contractor to perform that work.*b.* 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. *a.* “*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:
 - (1) A business, whether profit or nonprofit, trade, product, services, including professional services, premises, or operations.
 - (2) An activity of a state or local government, or an agency or political subdivision of state or local government.*b.* “*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, paragraph “*a*”, subparagraphs (1) and (2).
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.

88 Acts, ch 1111, §3; 2012 Acts, ch 1023, §124

Referred to in §515E.4, 515E.8

[T] Subsections 2, 6, and 7 amended