

Am. Insurance Act of 1988

FEB 22 1988

HOUSE FILE 2303
BY COMMITTEE ON SMALL BUSINESS
AND COMMERCE

Place On Calendar

(Formerly House Study Bill 693)

Passed House, Date 3/2/88 Passed Senate, Date 4/2/88 (S. 1297)

Vote: Ayes 70 Nays 0 Vote: Ayes 44 Nays 0

Approved April 26, 1988
Repealed by S. 1297 (4/2/88)
" w/o 2/12 (4/2/88)

A BILL FOR

1 An Act relating to nontraditional insurance arrangements by
2 prohibiting the incorporation or reincorporation of a
3 benevolent association, providing for the regulation of risk
4 retention groups and purchasing groups, increasing surplus
5 requirements for reciprocal insurers and repealing an
6 exemption to the applicability of state law to certain
7 reciprocal insurance contracts, and providing penalties.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 2303

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

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

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

9 The purpose of this chapter is to regulate the formation
10 and operation in this state of risk retention groups formed
11 pursuant to the Product Liability Risk Retention Act of 1981,
12 15 U.S.C. § 3901 et seq., or the Risk Retention Amendments of
13 1986, Pub. L. No. 99-563. As used in this chapter, "federal
14 Act" means the Product Liability Risk Retention Act of 1981 as
15 amended.

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

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

19 1. "Commissioner" means the commissioner of insurance or
20 the commissioner, director, superintendent of insurance, or
21 similar public official, in any other state.

22 2. "Completed operations liability" means liability
23 arising out of the installation, maintenance, or repair of any
24 product at a site which is not owned or controlled by either
25 of the following:

26 a. A person who performs that work.

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

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

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

35 a. For a corporation, the state in which the purchasing

1 group is incorporated.

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

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

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

10 b. Pay other obligations in the normal course of business.

11 5. "Insurance" means primary insurance, excess insurance,
12 reinsurance, surplus lines insurance, and any other
13 arrangement for shifting and distributing risk which is deter-
14 mined to be insurance under the laws of this state.

15 6. "Liability" means legal liability for damages,
16 including costs of defense, legal costs and fees, and other
17 claims expenses, because of injuries to other persons, damage
18 to their property, or other damage or loss to other persons
19 resulting from or arising out of either of the following:

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

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

25 "Liability" does not include personal risk liability and an
26 employer's liability with respect to its employees other than
27 an employer's legal liability under the federal Employers'
28 Liability Act, 45 U.S.C. § 51 et seq.

29 7. "Personal risk liability" means liability for damages
30 because of injury to a person, damage to property, or other
31 loss or damage resulting from personal, familial, or household
32 responsibilities or activities, rather than from respon-
33 sibilities or activities referred to in subsection 6, para-
34 graphs "a" and "b".

35 8. "Plan of operation or a feasibility study" means an

1 analysis which presents the expected activities and results of
2 a risk retention group including, at a minimum, all of the
3 following:

4 a. Information sufficient to verify that its members are
5 engaged in businesses or activities similar or related with
6 respect to the liability to which such members are exposed by
7 virtue of any related, similar, or common business, trade,
8 product, services, premises, or operations.

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

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

15 d. Pro forma financial statements and projections.

16 e. Appropriate opinions by a qualified, independent
17 casualty actuary, including a determination of minimum premium
18 or participation levels required to commence operations and to
19 prevent a hazardous financial condition.

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

23 g. Identification of each state in which the risk
24 retention group has obtained, or sought to obtain, a charter
25 and license, and a description of its status in each such
26 state.

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

31 9. "Product liability" means liability for damages because
32 of personal injury, death, emotional harm, consequential
33 economic damage, or property damage, including damages result-
34 ing from the loss of use of property, arising out of the manu-
35 facture, design, importation, distribution, packaging,

1 labeling, lease, or sale of a product, but does not include
2 the liability of a person for those damages if the product
3 involved was in the possession of the person when the incident
4 giving rise to the claim occurred.

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

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

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

12 c. It is composed of members whose businesses or activ-
13 ities are similar or related with respect to the liability to
14 which members are exposed by virtue of any related, similar,
15 or common business, trade, product, services, premises, or
16 operations.

17 d. It is domiciled in any state.

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

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

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

27 c. One of the following applies:

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

31 (2) Before January 1, 1985, it was chartered or licensed
32 and authorized to engage in the business of insurance under
33 the laws of Bermuda or the Cayman Islands and, before that
34 date, had certified to the commissioner of at least one state
35 that it satisfied the capitalization requirements of that

1 state, except that any such group is a risk retention group
2 only if it has been engaged in business continuously since
3 that date and only for the purpose of continuing to provide
4 insurance to cover product liability or completed operations
5 liability, as those terms were defined in the Product
6 Liability Risk Retention Act of 1981, 15 U.S.C. § 3901, before
7 the date of the enactment of the Risk Retention Amendments of
8 1986, Pub. L. No. 99-563.

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

12 e. One of the following applies:

13 (1) It has as its members only persons who have an owner-
14 ship interest in the group, and as its owners only persons who
15 are members and are provided insurance by the risk retention
16 group.

17 (2) It has as its sole member and sole owner an organiza-
18 tion which is owned by persons who are provided insurance by
19 the risk retention group.

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

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

29 g. Its activities do not include the provision of insur-
30 ance other than the following:

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

33 (2) Reinsurance with respect to the liability of any other
34 risk retention group, or any members of another such group,
35 which is engaged in businesses or activities so that the group

1 or member meets the requirement described in paragraph "f"
2 from membership in the risk retention group which provides the
3 reinsurance.

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

5 12. "State" means a state of the United States or the Dis-
6 trict of Columbia.

7 Sec. 4. NEW SECTION. 515E.3 RISK RETENTION GROUPS ORGAN-
8 IZED IN THIS STATE.

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

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

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

35 However, a risk retention group failing to qualify under

1 the definitional requirement of the federal Act, will not
2 benefit from this exemption from state law. The commissioner,
3 therefore, may apply any of the laws that otherwise may be
4 preempted by the federal Act because the nonexempt group will
5 not qualify for the preemption.

6 1. NOTICE OF OPERATIONS AND DESIGNATION OF COMMISSIONER AS
7 AGENT. Before offering insurance in this state, a risk re-
8 tention group shall submit to the commissioner all of the
9 following:

10 a. A statement identifying the state or states in which
11 the risk retention group is chartered and licensed as a lia-
12 bility insurance company, date of chartering, its principal
13 place of business, and other information, including informa-
14 tion on its membership, as the commissioner of this state re-
15 quires to verify that the risk retention group is qualified
16 under section 515E.2, subsection 11.

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

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

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

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

1 the following:

2 a. A copy of the group's financial statement submitted to
3 its state of domicile, which shall be certified by an in-
4 dependent public accountant and contain a statement of opinion
5 on loss and loss adjustment expense reserves made by a member
6 of the American academy of actuaries or a qualified loss re-
7 serve specialist under criteria established by the national
8 association of insurance commissioners.

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

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

14 d. Information required to verify its continuing quali-
15 fication as a risk retention group under section 515E.2,
16 subsection ii.

17 3. TAXATION.

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

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

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

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

34 5. DECEPTIVE, FALSE, OR FRAUDULENT PRACTICES. A risk re-
35 tention group shall comply with sections 507B.3 and 507B.4

1 regarding deceptive, false, or fraudulent acts or practices.
2 However, if the commissioner seeks an injunction regarding
3 such conduct, the injunction must be obtained from a court of
4 competent jurisdiction.

5 6. EXAMINATION REGARDING FINANCIAL CONDITION. A risk re-
6 tention group shall submit to an examination by the commis-
7 sioner to determine its financial condition if the
8 commissioner of the jurisdiction in which the group is
9 chartered has not initiated an examination or does not
10 initiate an examination within sixty days after a request by
11 the commissioner of this state. Any such examination shall be
12 coordinated to avoid unjustified repetition and conducted in
13 an expeditious manner and in accordance with the national
14 association of insurance commissioners' examiner handbook.

15 7. NOTICE TO PURCHASERS. Every application form for
16 insurance from a risk retention agency and every policy issued
17 by a risk retention group shall contain in ten-point type on
18 the front page and the declaration page, the following notice:

19 NOTICE

20 This policy is issued by your risk retention group. Your
21 risk retention group may not be subject to all of the insur-
22 ance laws and regulations of your state. State insurance
23 insolvency guaranty funds are not available for your risk re-
24 tention group.

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

27 a. The solicitation or sale of insurance by a risk re-
28 tention group to a person who is not eligible for membership
29 in the group.

30 b. The solicitation or sale of insurance by, or operation
31 of, a risk retention group that is in a hazardous financial
32 condition or is financially impaired.

33 9. PROHIBITION AGAINST OWNERSHIP BY AN INSURANCE COMPANY.
34 A risk retention group shall not be allowed to do business in
35 this state if an insurance company is directly or indirectly a

1 member or owner of the risk retention group, other than in the
2 case of a risk retention group all of whose members are insur-
3 ance companies.

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

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

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

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

21 Sec. 7. NEW SECTION. 515E.6 COUNTERSIGNATURES NOT
22 REQUIRED.

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

26 Sec. 8. NEW SECTION. 515E.7 PURCHASING GROUPS
27 EXEMPTIONS.

28 A purchasing group which meets the criteria established
29 under the federal Act is exempt from any law of this state
30 relating to the creation of groups for the purchase of
31 insurance, the prohibition of group purchasing, the
32 countersignature requirement as provided in sections 515.22
33 and 515.52, or any law that would discriminate against a
34 purchasing group or its members. An insurer is exempt from
35 any law of this state which prohibits providing, or offering

1 to provide, to a purchasing group or its members advantages
2 based on their loss and expense experience not afforded to
3 other persons with respect to rates, policy forms, coverages,
4 or other matters. A purchasing group is subject to all other
5 applicable laws.

6 Sec. 9. NEW SECTION. 515E.8 PURCHASING GROUPS -- RE-
7 QUIREMENTS.

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

11 a. The state in which the group is domiciled and all
12 states in which the group does or intends to do business.

13 b. The lines and classifications of liability insurance
14 which the purchasing group intends to purchase.

15 c. The insurance company from which the group intends to
16 purchase its insurance and the domicile of that company.

17 d. The principal place of business of the group.

18 e. The method by which, and the person or persons, if any,
19 through whom insurance will be offered to its members whose
20 risks are resident or located in this state.

21 f. Other information as required by the commissioner to
22 verify that the purchasing group is qualified under section
23 515E.2, subsection 10.

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

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

33 a. It was domiciled before April 2, 1986 and is domiciled
34 on and after October 27, 1986, in any state of the United
35 States.

1 b. Before and since October 27, 1986, it purchased insur-
2 ance from an insurance carrier licensed in any state.

3 c. It was a purchasing group under the requirements of the
4 Product Liability Retention Act of 1981 before October 27,
5 1986.

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

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

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

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

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

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

23 4. A purchasing group which obtains liability insurance
24 from an insurer not admitted in this state or a risk retention
25 group shall inform each of the members of the group, which
26 have a risk resident or located in this state, that the risk
27 is not protected by an insurance insolvency guaranty fund in
28 this state, and that the risk retention group or insurer may
29 not be subject to all insurance laws and regulations of this
30 state. A purchasing group shall not purchase insurance
31 providing for a deductible or self-insured retention, unless
32 the deductible or self-insured retention is applicable to
33 individual members of the purchasing group.

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

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

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

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

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

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

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

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

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

34 The commissioner may establish and from time to time amend
35 rules relating to risk retention groups as necessary or

1 desirable to carry out the provisions of this chapter.

2 Sec. 16. Section 520.9, Code 1987, is amended to read as
3 follows:

4 520.9 STANDARD OF SOLVENCY.

5 There shall at all times be maintained as assets a sum in
6 cash, or in securities of the kind designated by the laws of
7 the state where the principal office is located for the
8 investment of funds of insurance companies, equal to one
9 hundred percent of the net unearned premiums or deposits
10 collected and credited to the account of subscribers, or
11 assets equal to fifty percent of the net annual deposits
12 collected and credited to the account of subscribers on
13 policies having one year or less to run and pro rata on those
14 for longer periods; in addition to which there shall be
15 maintained in cash, or in such securities, assets sufficient
16 to discharge all liabilities on all outstanding losses arising
17 under policies issued, the same to be calculated in accordance
18 with the laws of the state relating to similar reserves for
19 companies insuring similar risks; provided that where the
20 assets on hand available for the payment of losses other than
21 determined losses, ~~shall do~~ do not equal three-hundred-thousand
22 two million dollars, all liability for each determined loss or
23 claim deferred for more than one year, shall be provided for
24 by a special deposit in a trust company or bank having
25 fiduciary powers of the state in which the principal office is
26 located, to be used in payment of compensation benefits for
27 disability; such deposit to be a trust fund and applicable
28 only to the purposes stated, or such liability may be
29 reinsured in authorized companies with a surplus of at least
30 ~~three-hundred-thousand~~ two million dollars. For the purpose
31 of ~~said~~ such reserves, net deposits shall be construed to mean
32 the advance payments of subscribers after deducting therefrom
33 the amount specifically provided in the subscribers'
34 agreements for expenses. If at any time the assets so held in
35 cash or such securities shall be less than required above, or

1 less than ~~three-hundred-thousand~~ two million dollars, the
2 subscribers or their attorney for them shall make up the
3 deficiency within thirty days after notice from the
4 commissioner of insurance ~~se~~ to do so. In computing the
5 assets required by this section, the amount specified in
6 ~~subsection-7,~~ section 520.4, subsection 7, shall be included.

7 Sec. 17. NEW SECTION. 520.9A SOLVENCY STANDARD --
8 TRANSITION.

9 Notwithstanding section 520.9, a reciprocal or inter-
10 insurance insurer authorized to transact business in this
11 state prior to July 1, 1988, may continue in operation pro-
12 vided that the insurer contributes an additional ten percent
13 of the previous year ending capital and surplus to capital and
14 surplus each year. If an insurer fails to contribute the
15 additional ten percent, the commissioner of insurance may
16 revoke the insurer's authorization to do business in this
17 state. The insurance commissioner may waive this requirement
18 for just cause shown.

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

20 EXPLANATION

21 Section 1 of this bill provides that benevolent
22 associations shall not be incorporated or reincorporated in
23 this state on or after July 1, 1988. Existing benevolent
24 associations are still subject to the provisions of this
25 chapter and continue to be regulated by the insurance
26 division.

27 Sections 2 through 5 of this bill provide for state
28 regulation by the insurance division of the department of
29 commerce of risk retention (self-insurance) groups formed
30 under the federal Product Liability Risk Retention Act of 1981
31 as amended by the Risk Retention Amendments of 1986.

32 Section 3 of the bill provides key definitions.

33 Section 4 requires a risk retention group seeking to be
34 organized in this state to be licensed as a liability
35 insurance company, and to submit a plan of operation or

1 feasibility study to the insurance commissioner.

2 Section 5 requires out-of-state risk retention groups to
3 meet certain requirements, including disclosure rules,
4 designation of the commissioner as an agent for service of
5 legal process, and compliance with the unfair claims
6 settlement practices law, among others. Out-of-state risk
7 retention groups also must submit a plan of operation or
8 feasibility study to the insurance commissioner, and risk
9 retention premiums are subject to the same taxation as for
10 foreign-admitted insurers.

11 Section 6 prohibits risk retention groups from joining or
12 contributing to an insurance insolvency guaranty fund.

13 Section 7 provides that no countersignature is required for
14 risk retention policies.

15 Section 8 exempts a purchasing group meeting federal
16 requirements from certain state laws.

17 Section 9 requires purchasing groups to furnish certain
18 information to the commissioner.

19 Section 10 bars purchasing groups from purchasing insurance
20 from a risk retention group which is not licensed or organized
21 in the state under certain circumstances.

22 Sections 11 and 12 provide the commissioner with
23 administrative and rulemaking authority to enforce the bill,
24 and provide penalties for violations.

25 Section 13 requires risk retention group agents and brokers
26 to be licensed in the state.

27 Section 14 provides for state enforcement of any federal
28 district court order finding that a group is in a hazardous
29 financial condition.

30 Sections 16 through 18 of the bill relate to reciprocal
31 insurers. Section 16 increases from \$300,000 to \$2,000,000
32 the amount that a reciprocal insurer must maintain in surplus
33 above liabilities from outstanding losses.

34 Section 17 provides that insurers previously authorized to
35 operate without \$2,000,000 in surplus may continue operation

1 provided certain financial conditions are met.
2 Section 18 repeals section 520.22 which exempts certain
3 reciprocal insurance contracts from state law, unless other-
4 wise provided.

5 SIMILAR TO HSB 693 (LSB 7632DH)

HOUSE FILE 2303
FISCAL NOTE

REQUESTED BY REPRESENTATIVE SWARTZ

In compliance with a written request received February 18, 1988, a fiscal note for **HOUSE FILE 2303** is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note are available from the Legislative Fiscal Bureau to members of the Legislature upon request.

House File 2303 provides for state regulation by the Insurance Division of the Department of Commerce for risk retention (self insured) groups. Insurance agents who offer self insured insurance products would be licensed as a precondition to their sales.

ASSUMPTIONS

1. Approximately 200 insurance agents will offer risk retention insurance products.
2. The insurance agent licensing fee will remain at \$10.00 annually.

FISCAL EFFECT

Based on the above assumptions it is anticipated that \$2,000 in additional revenue will be raised, while no additional expenditures will be required.

(Source: Insurance Division)

(LSB 7632H, JEM)

FILED MARCH 8, 1988

BY DENNIS PROUTY, FISCAL DIRECTOR

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HSB 693

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SMALL BUSINESS AND COMMERCE
HOUSE FILE 2303

BY (PROPOSED INSURANCE DIVISION
OF THE DEPARTMENT OF COM-
MERCE BILL)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to nontraditional insurance arrangements by
2 prohibiting the incorporation or reincorporation of a
3 benevolent association, providing for the regulation of risk
4 retention groups and purchasing groups, increasing surplus
5 requirements for reciprocal insurers and repealing an
6 exemption to the applicability of state law to certain
7 reciprocal insurance contracts, and providing penalties.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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

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

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

9 The purpose of this chapter is to regulate the formation
10 and operation in this state of risk retention groups formed
11 pursuant to the Product Liability Risk Retention Act of 1981,
12 15 U.S.C. § 3901 et seq., or the Risk Retention Amendments of
13 1986, Pub. L. No. 99-563. As used in this chapter, "federal
14 Act" means the Product Liability Risk Retention Act of 1981 as
15 amended.

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

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

19 1. "Commissioner" means the commissioner of insurance or
20 the commissioner, director, superintendent of insurance, or
21 similar public official, in any other state.

22 2. "Completed operations liability" means liability
23 arising out of the installation, maintenance, or repair of any
24 product at a site which is not owned or controlled by either
25 of the following:

26 a. A person who performs that work.

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

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

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

35 a. For a corporation, the state in which the purchasing

1 group is incorporated.

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

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

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

10 b. Pay other obligations in the normal course of business.

11 5. "Insurance" means primary insurance, excess insurance,
12 reinsurance, surplus lines insurance, and any other
13 arrangement for shifting and distributing risk which is deter-
14 mined to be insurance under the laws of this state.

15 6. "Liability" means legal liability for damages,
16 including costs of defense, legal costs and fees, and other
17 claims expenses, because of injuries to other persons, damage
18 to their property, or other damage or loss to other persons
19 resulting from or arising out of either of the following:

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

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

25 "Liability" does not include personal risk liability and an
26 employer's liability with respect to its employees other than
27 an employer's legal liability under the federal Employers'
28 Liability Act, 45 U.S.C. § 51 et seq.

29 7. "Personal risk liability" means liability for damages
30 because of injury to a person, damage to property, or other
31 loss or damage resulting from personal, familial, or household
32 responsibilities or activities, rather than from respon-
33 sibilities or activities referred to in subsection 6, para-
34 graphs "a" and "b".

35 8. "Plan of operation or a feasibility study" means an

1 analysis which presents the expected activities and results of
2 a risk retention group including, at a minimum, all of the
3 following:

4 a. Information sufficient to verify that its members are
5 engaged in businesses or activities similar or related with
6 respect to the liability to which such members are exposed by
7 virtue of any related, similar, or common business, trade,
8 product, services, premises, or operations.

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

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

15 d. Pro forma financial statements and projections.

16 e. Appropriate opinions by a qualified, independent
17 casualty actuary, including a determination of minimum premium
18 or participation levels required to commence operations and to
19 prevent a hazardous financial condition.

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

23 g. Identification of each state in which the risk
24 retention group has obtained, or sought to obtain, a charter
25 and license, and a description of its status in each such
26 state.

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

31 9. "Product liability" means liability for damages because
32 of personal injury, death, emotional harm, consequential
33 economic damage, or property damage, including damages result-
34 ing from the loss of use of property, arising out of the manu-
35 facture, design, importation, distribution, packaging,

1 labeling, lease, or sale of a product, but does not include
2 the liability of a person for those damages if the product
3 involved was in the possession of the person when the incident
4 giving rise to the claim occurred.

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

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

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

12 c. It is composed of members whose businesses or activ-
13 ities are similar or related with respect to the liability to
14 which members are exposed by virtue of any related, similar,
15 or common business, trade, product, services, premises, or
16 operations.

17 d. It is domiciled in any state.

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

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

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

27 c. One of the following applies:

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

31 (2) Before January 1, 1985, it was chartered or licensed
32 and authorized to engage in the business of insurance under
33 the laws of Bermuda or the Cayman Islands and, before that
34 date, had certified to the commissioner of at least one state
35 that it satisfied the capitalization requirements of that

1 state, except that any such group is a risk retention group
2 only if it has been engaged in business continuously since
3 that date and only for the purpose of continuing to provide
4 insurance to cover product liability or completed operations
5 liability, as those terms were defined in the Product
6 Liability Risk Retention Act of 1981, 15 U.S.C. § 3901, before
7 the date of the enactment of the Risk Retention Amendments of
8 1986, Pub. L. No. 99-563.

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

12 e. One of the following applies:

13 (1) It has as its members only persons who have an owner-
14 ship interest in the group, and as its owners only persons who
15 are members and are provided insurance by the risk retention
16 group.

17 (2) It has as its sole member and sole owner an organiza-
18 tion which is owned by persons who are provided insurance by
19 the risk retention group.

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

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

29 g. Its activities do not include the provision of insur-
30 ance other than the following:

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

33 (2) Reinsurance with respect to the liability of any other
34 risk retention group, or any members of another such group,
35 which is engaged in businesses or activities so that the group

1 or member meets the requirement described in paragraph "f"
2 from membership in the risk retention group which provides the
3 reinsurance.

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

5 12. "State" means a state of the United States or the Dis-
6 trict of Columbia.

7 Sec. 4. NEW SECTION. 515E.3 RISK RETENTION GROUPS ORGAN-
8 IZED IN THIS STATE.

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

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

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

35 However, a risk retention group failing to qualify under

1 the definitional requirement of the federal Act, will not
2 benefit from this exemption from state law. The commissioner,
3 therefore, may apply any of the laws that otherwise may be
4 preempted by the federal Act because the nonexempt group will
5 not qualify for the preemption.

6 1. NOTICE OF OPERATIONS AND DESIGNATION OF COMMISSIONER AS
7 AGENT. Before offering insurance in this state, a risk re-
8 tention group shall submit to the commissioner all of the
9 following:

10 a. A statement identifying the state or states in which
11 the risk retention group is chartered and licensed as a lia-
12 bility insurance company, date of chartering, its principal
13 place of business, and other information, including informa-
14 tion on its membership, as the commissioner of this state re-
15 quires to verify that the risk retention group is qualified
16 under section 515E.2, subsection 11.

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

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

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

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

1 the following:

2 a. A copy of the group's financial statement submitted to
3 its state of domicile, which shall be certified by an in-
4 dependent public accountant and contain a statement of opinion
5 on loss and loss adjustment expense reserves made by a member
6 of the American academy of actuaries or a qualified loss re-
7 serve specialist under criteria established by the national
8 association of insurance commissioners.

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

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

14 d. Information required to verify its continuing quali-
15 fication as a risk retention group under section 2, subsection
16 11.

17 3. TAXATION.

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

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

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

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

34 5. DECEPTIVE, FALSE, OR FRAUDULENT PRACTICES. A risk re-
35 tention group shall comply with sections 507B.3 and 507B.4

1 regarding deceptive, false, or fraudulent acts or practices.
2 However, if the commissioner seeks an injunction regarding
3 such conduct, the injunction must be obtained from a court of
4 competent jurisdiction.

5 6. EXAMINATION REGARDING FINANCIAL CONDITION. A risk re-
6 tention group shall submit to an examination by the commis-
7 sioner to determine its financial condition if the
8 commissioner of the jurisdiction in which the group is
9 chartered has not initiated an examination or does not
10 initiate an examination within sixty days after a request by
11 the commissioner of this state. Any such examination shall be
12 coordinated to avoid unjustified repetition and conducted in
13 an expeditious manner and in accordance with the national
14 association of insurance commissioners' examiner handbook.

15 7. NOTICE TO PURCHASERS. Every application form for
16 insurance from a risk retention agency and every policy issued
17 by a risk retention group shall contain in ten-point type on
18 the front page and the declaration page, the following notice:

19 NOTICE

20 This policy is issued by your risk retention group. Your
21 risk retention group may not be subject to all of the insur-
22 ance laws and regulations of your state. State insurance
23 insolvency guaranty funds are not available for your risk re-
24 tention group.

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

27 a. The solicitation or sale of insurance by a risk re-
28 tention group to a person who is not eligible for membership
29 in the group.

30 b. The solicitation or sale of insurance by, or operation
31 of, a risk retention group that is in a hazardous financial
32 condition or is financially impaired.

33 9. PROHIBITION AGAINST OWNERSHIP BY AN INSURANCE COMPANY.
34 A risk retention group shall not be allowed to do business in
35 this state if an insurance company is directly or indirectly a

1 member or owner of the risk retention group, other than in the
2 case of a risk retention group all of whose members are insur-
3 ance companies.

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

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

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

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

21 Sec. 7. NEW SECTION. 515E.6 COUNTERSIGNATURES NOT
22 REQUIRED.

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

26 Sec. 8. NEW SECTION. 515E.7 PURCHASING GROUPS
27 EXEMPTIONS.

28 A purchasing group which meets the criteria established
29 under the federal Act is exempt from any law of this state
30 relating to the creation of groups for the purchase of
31 insurance, the prohibition of group purchasing, the
32 countersignature requirement as provided in sections 515.22
33 and 515.52, or any law that would discriminate against a
34 purchasing group or its members. An insurer is exempt from
35 any law of this state which prohibits providing, or offering

1 to provide, to a purchasing group or its members advantages
2 based on their loss and expense experience not afforded to
3 other persons with respect to rates, policy forms, coverages,
4 or other matters. A purchasing group is subject to all other
5 applicable laws.

6 Sec. 9. NEW SECTION. 515E.8 PURCHASING GROUPS -- RE-
7 QUIREMENTS.

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

11 a. The state in which the group is domiciled and all
12 states in which the group does or intends to do business.

13 b. The lines and classifications of liability insurance
14 which the purchasing group intends to purchase.

15 c. The insurance company from which the group intends to
16 purchase its insurance and the domicile of that company.

17 d. The principal place of business of the group.

18 e. The method by which, and the person or persons, if any,
19 through whom insurance will be offered to its members whose
20 risks are resident or located in this state.

21 f. Other information as required by the commissioner to
22 verify that the purchasing group is qualified under section
23 515E.2, subsection 10.

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

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

33 a. It was domiciled before April 2, 1986 and is domiciled
34 on and after October 27, 1986, in any state of the United
35 States.

1 b. Before and since October 27, 1986, it purchased insur-
2 ance from an insurance carrier licensed in any state.

3 c. It was a purchasing group under the requirements of the
4 Product Liability Retention Act of 1981 before October 27,
5 1986.

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

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

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

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

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

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

23 4. A purchasing group which obtains liability insurance
24 from an insurer not admitted in this state or a risk retention
25 group shall inform each of the members of the group, which
26 have a risk resident or located in this state, that the risk
27 is not protected by an insurance insolvency guaranty fund in
28 this state, and that the risk retention group or insurer may
29 not be subject to all insurance laws and regulations of this
30 state. A purchasing group shall not purchase insurance
31 providing for a deductible or self-insured retention, unless
32 the deductible or self-insured retention is applicable to
33 individual members of the purchasing group.

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

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

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

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

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

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

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

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

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

34 The commissioner may establish and from time to time amend
35 rules relating to risk retention groups as necessary or

1 desirable to carry out the provisions of this chapter.

2 Sec. 16. Section 520.9, Code 1987, is amended to read as
3 follows:

4 520.9 STANDARD OF SOLVENCY.

5 There shall at all times be maintained as assets a sum in
6 cash, or in securities of the kind designated by the laws of
7 the state where the principal office is located for the
8 investment of funds of insurance companies, equal to one
9 hundred percent of the net unearned premiums or deposits
10 collected and credited to the account of subscribers, or
11 assets equal to fifty percent of the net annual deposits
12 collected and credited to the account of subscribers on
13 policies having one year or less to run and pro rata on those
14 for longer periods; in addition to which there shall be
15 maintained in cash, or in such securities, assets sufficient
16 to discharge all liabilities on all outstanding losses arising
17 under policies issued, the same to be calculated in accordance
18 with the laws of the state relating to similar reserves for
19 companies insuring similar risks; provided that where the
20 assets on hand available for the payment of losses other than
21 determined losses, ~~shall~~ do not equal three-hundred-thousand
22 two million dollars, all liability for each determined loss or
23 claim deferred for more than one year, shall be provided for
24 by a special deposit in a trust company or bank having
25 fiduciary powers of the state in which the principal office is
26 located, to be used in payment of compensation benefits for
27 disability; such deposit to be a trust fund and applicable
28 only to the purposes stated, or such liability may be
29 reinsured in authorized companies with a surplus of at least
30 three-hundred-thousand two million dollars. For the purpose
31 of said such reserves, net deposits shall be construed to mean
32 the advance payments of subscribers after deducting ~~therefrom~~
33 the amount specifically provided in the subscribers'
34 agreements for expenses. If at any time the assets so held in
35 cash or such securities shall be less than required above, or

1 less than ~~three-hundred-thousand~~ two million dollars, the
2 subscribers or their attorney for them shall make up the
3 deficiency within thirty days after notice from the
4 commissioner of insurance ~~so~~ to do so. In computing the
5 assets required by this section, the amount specified in
6 ~~subsection-77~~ section 520.4, subsection 7, shall be included.

7 Sec. 17. NEW SECTION. 520.9A SOLVENCY STANDARD --
8 TRANSITION.

9 1. Notwithstanding section 520.9, a reciprocal or inter-
10 insurance insurer authorized to transact business in this
11 state prior to July 1, 1988, may continue in operation pro-
12 vided both of the following conditions are met:

13 a. The insurer contributes a minimum of an additional ten
14 percent to capital and surplus each year.

15 b. The insurer attains the minimum capital and surplus
16 requirements of two million dollars on or before July 1, 1993.

17 2. If an insurer fails to meet either of the requirements
18 imposed by this section, the commissioner of insurance shall
19 immediately revoke the insurer's authorization to do business
20 in this state.

21 3. This section is repealed July 1, 1993.

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

23 EXPLANATION

24 Section 1 of this bill provides that benevolent
25 associations shall not be incorporated or reincorporated in
26 this state on or after July 1, 1988. Existing benevolent
27 associations are still subject to the provisions of this
28 chapter and continue to be regulated by the insurance
29 division.

30 Sections 2 through 5 of this bill provide for state
31 regulation by the insurance division of the department of
32 commerce of risk retention (self-insurance) groups formed
33 under the federal Product Liability Risk Retention Act of 1981
34 as amended by the Risk Retention Amendments of 1986.

35 Section 3 of the bill provides key definitions.

1 Section 4 requires a risk retention group seeking to be
2 organized in this state to be licensed as a liability
3 insurance company, and to submit a plan of operation or
4 feasibility study to the insurance commissioner.

5 Section 5 requires out-of-state risk retention groups to
6 meet certain requirements, including disclosure rules,
7 designation of the commissioner as an agent for service of
8 legal process, and compliance with the unfair claims
9 settlement practices law, among others. Out-of-state risk
10 retention groups also must submit a plan of operation or
11 feasibility study to the insurance commissioner, and risk
12 retention premiums are subject to the same taxation as for
13 foreign-admitted insurers.

14 Section 6 prohibits risk retention groups from joining or
15 contributing to an insurance insolvency guaranty fund.

16 Section 7 provides that no countersignature is required for
17 risk retention policies.

18 Section 8 exempts a purchasing group meeting federal
19 requirements from certain state laws.

20 Section 9 requires purchasing groups to furnish certain
21 information to the commissioner.

22 Section 10 bars purchasing groups from purchasing insurance
23 from a risk retention group which is not licensed or organized
24 in the state under certain circumstances.

25 Sections 11 and 12 provide the commissioner with
26 administrative and rulemaking authority to enforce the bill,
27 and provide penalties for violations.

28 Section 13 requires risk retention group agents and brokers
29 to be licensed in the state.

30 Section 14 provides for state enforcement of any federal
31 district court order finding that a group is in a hazardous
32 financial condition.

33 Sections 16 through 18 of the bill relate to reciprocal
34 insurers. Section 16 increases from \$300,000 to \$2,000,000
35 the amount that a reciprocal insurer must maintain in surplus

1 above liabilities from outstanding losses.

2 Section 17 provides that insurers previously authorized to
3 operate without \$2,000,000 in surplus may continue operation
4 provided certain financial conditions are met.

5 Section 18 repeals section 520.22 which exempts certain
6 reciprocal insurance contracts from state law, unless other-
7 wise provided.

8 BACKGROUND STATEMENT

9 SUBMITTED BY THE AGENCY

10 Presently, there are a number of benevolent associations in
11 existence offering life or health coverage to their members.
12 The operations of these associations are limited in scope yet
13 the present Code sections are wholly inadequate to effectively
14 regulate them, particularly as they venture into hazardous
15 areas such as health coverage. The insurance division
16 believes that no insurance entity can feasibly operate,
17 consistent with the protection of the public, on such a small
18 scale, and with such limited regulation. Accordingly, this
19 bill would simply repeal the authorization for those
20 associations. Existing associations would be "grandfathered"
21 so as to be allowed to continue to operate under present
22 regulations.

23 This bill also provides for state regulation by the
24 department of insurance of risk retention (self-insurance)
25 groups formed under the federal Product Liability Risk
26 Retention Act of 1981 as amended by the Risk Retention
27 Amendments of 1986.

28 Section 3 of the bill provides key definitions.

29 Section 4 requires a risk retention group seeking to be
30 organized in this state to be licensed as a liability
31 insurance company, and to submit a plan of operation or
32 feasibility study to the insurance commissioner.

33 Section 5 requires out-of-state risk retention groups to
34 meet certain requirements, including disclosure rules,
35 designation of the commissioner as an agent for service of

1 legal process, and compliance with the unfair claims
2 settlement practices law, among others. Out-of-state risk
3 retention groups also must submit a plan of operation or
4 feasibility study to the insurance commissioner, and risk
5 retention premiums are subject to the same taxation as for
6 foreign-admitted insurers.

7 Section 6 prohibits risk retention groups from joining or
8 contributing to an insurance insolvency guaranty fund.

9 Section 7 provides that no countersignature is required for
10 risk retention policies.

11 Section 8 exempts a purchasing group meeting federal
12 requirements from certain state laws.

13 Section 9 requires purchasing groups to furnish certain
14 information to the commissioner.

15 Section 10 bars purchasing groups from purchasing insurance
16 from a risk retention group not licensed or organized in the
17 state.

18 Sections 11 and 12 provide the commissioner with
19 administrative and rulemaking authority to enforce the bill,
20 and provide penalties for violations.

21 Section 13 requires risk retention group agents and brokers
22 to be licensed in the state.

23 Section 14 provides for state enforcement of any U.S.
24 district court order finding that a group is in a hazardous
25 financial condition.

26 The bill also provides modifications to Iowa's reciprocal
27 and interinsurance exchange Act. Presently, a reciprocal
28 insurer under Iowa Code chapter 520 must maintain surplus over
29 and above liabilities from outstanding losses of \$300,000.
30 This bill raises the required surplus to \$2,000,000, similar
31 to the surplus requirements of property and casualty insurers.
32 Reciprocals are also subjected to the supervisory authority of
33 the commissioner of insurance by removing the section which
34 acts to exempt them from that authority. Existing reciprocals
35 are given a period of five years to bring their surplus to the

1 new statutory level.

2 COMPANION TO LSB 7631DS

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HOUSE FILE 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 609B.4, subsection 9.

5. RECEIPTING, FALSE, OR FRAUDULENT PRACTICES. A risk retention group shall comply with sections 607B.1 and 607B.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 law.

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.

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~~ 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-77~~ section 520.4, subsection 7, shall be included.

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

Notwithstanding section 520.9, a reciprocal or inter-insurance 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.

DONALD D. AVENSON
Speaker of the House

JO ANN ZIMMERMAN
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 2303, Seventy-second General Assembly.

JOSEPH O'HERN
Chief Clerk of the House

Approved April 26, 1988

TERRY E. BRANSTAD
Governor