

17:47A-1

LEGISLATIVE HISTORY CHECKLIST
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"New Jersey Risk Retention Act"

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LAWS OF: 1993 **CHAPTER:** 240
BILL NO: A81
SPONSOR(S) Gaffney and others
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FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes
COMMITTEE STATEMENT: **ASSEMBLY:** Yes
SENATE: Yes
FISCAL NOTE: No
VETO MESSAGE: No
MESSAGE ON SIGNING: Yes

FOLLOWING WERE PRINTED:

REPORTS: No
HEARINGS: No

Attached: "Model Risk Retention Act" promulgated by National Association of Insurance Commissioners.

See newspaper clipping--attached:
"Governor signs stricter scrutiny for insurance companies in state," 8-10-93,
Star Ledger.

KBG:pp

P.L.1993, CHAPTER 240, approved August 9, 1993
1992 Assembly No. 81

1 AN ACT concerning the formation and operation of risk retention
2 groups and purchasing groups and supplementing Title 17 of the
3 Revised Statutes.

4
5 BE IT ENACTED by the Senate and General Assembly of the
6 State of New Jersey:

7 1. This act shall be known and may be cited as the "New
8 Jersey Risk Retention Act."

9 2. As used in this act:

10 "Commissioner" means the Commissioner of Insurance.

11 "Completed operations liability" means liability arising out of
12 the installation, maintenance or repair of any product at a site
13 which is not owned or controlled by any person who performs that
14 work or any person who hires an independent contractor to
15 perform that work, and includes liability for activities which are
16 completed or abandoned before the date of the occurrence which
17 gives rise to the liability.

18 "Deductible" means any arrangement under which an insurer
19 pays claims and then seeks reimbursement from the insured,
20 except that the insurer's obligation to pay claims is not
21 contingent upon reimbursement from the insured.

22 "Doing business in this State" means solicitation in this State,
23 having group members in this State, or having an office in this
24 State.

25 "Domicile" means, with respect to a purchasing group: for a
26 corporation, the state in which the purchasing group is
27 incorporated; for an unincorporated entity, the state of its
28 principal place of business.

29 "Hazardous financial condition" means that, based on its
30 present or reasonably anticipated financial condition, a risk
31 retention group, although not yet financially impaired or
32 insolvent, is unlikely to be able to meet obligations to
33 policyholders with respect to known claims and reasonably
34 anticipated claims or to pay other obligations in the normal
35 course of business.

36 "Insurance" means primary insurance, excess insurance,
37 reinsurance, surplus lines insurance and any other arrangement
38 for shifting and distributing risk which is determined to be
39 insurance pursuant to the laws of this State.

40 "Liability" means legal liability for damages, including the cost
41 of defense, legal costs and fees, and other claims expenses,
42 because of injuries to other persons, damage to their property, or
43 other damage or loss to such other persons resulting from or
44 arising out of: any profit or non-profit business, trade, product,
45 services, including professional services, premises, or operations;

1 or any activity of any state or local government or any agency or
2 political subdivision thereof, but does not include personal risk
3 liability or an employer's liability with respect to its employees
4 other than legal liability under the federal "Employers' Liability
5 Act," 45 U.S.C.51 et seq.

6 "Personal risk liability" means liability for damages because of
7 injury to any person, damage to property or other loss or damage
8 resulting from any personal, familial or household responsibilities
9 or activities, rather than from the responsibilities or activities
10 referred to under the definition of "liability" in this section.

11 "Plan of operation" or a "feasibility study" means an analysis
12 which presents the expected activities and results of the risk
13 retention group, including: information sufficient to verify that
14 its members are engaged in business or activities similar or
15 related with respect to the liability to which such members are
16 exposed by virtue of any related, similar or common business,
17 trade, product, services, premises or operations; for each state in
18 which it intends to operate, the coverages, deductibles, coverage
19 limits, rates, and rating classification systems for each line of
20 insurance the group intends to offer; historical and expected loss
21 experience of the proposed members and national experience of
22 similar exposures to the extent that this experience is reasonably
23 available; pro forma financial statements and projections;
24 appropriate opinions by a qualified actuary, including the
25 determination of minimum premium or participation levels and
26 capitalization required to commence operations and to prevent a
27 hazardous financial condition, which shall be in the format and
28 otherwise satisfy all requirements established by the
29 commissioner for loss reserve actuarial opinions required to be
30 submitted by licensed property and casualty insurers in this State;
31 identification of management, underwriting and claims
32 procedures, marketing methods, managerial oversight methods,
33 investment policies and reinsurance agreements; identification of
34 each state in which the risk retention group has obtained, or
35 sought to obtain, a charter and license, and a description of its
36 status in each such state; and such other matters as may be
37 prescribed by the commissioner of the state in which the risk
38 retention group is chartered for liability insurance companies
39 authorized by the insurance laws of that state.

40 "Product liability" means liability for damages because of any
41 personal injury, death, emotional harm, consequential economic
42 damage, or property damage, including damages resulting from
43 the loss of use of property, arising out of the manufacture,
44 design, importation, distribution, packaging, labeling, lease or
45 sale of a product. "Product liability" does not include the
46 liability of any person for those damages if the product involved
47 was in the possession of that person when the incident giving rise
48 to the claim occurred.

49 "Purchasing group" means any group which: has as one of its
50 purposes the purchase of liability insurance on a group basis;
51 purchases such insurance only for its group members and only to
52 cover their similar or related liability exposure; is composed of
53 members whose businesses or activities are similar or related
54 with respect to the liability to which members are exposed by

1 virtue of any related, similar or common business, trade, product,
2 services, premises or operations; and is domiciled in this or any
3 other state.

4 "Retrospectively rated" means a rating plan or system,
5 whereby the premium payable by an insured is subject to a
6 contractual adjustment after the expiration of the policy, based
7 upon actual incurred experience.

8 "Risk retention group" means any corporation or other limited
9 liability association: which is organized for the primary purpose
10 of, and whose primary activity consists of, assuming and
11 spreading all, or any portion, of the liability exposure of its group
12 members; which is chartered and licensed as a liability insurance
13 company and is authorized to engage in the business of insurance
14 under the laws of any state, or prior to January 1, 1985, was
15 chartered or licensed and authorized to engage in the business of
16 insurance under the laws of Bermuda or the Cayman Islands, and
17 before that date, certified to the commissioner of insurance, or
18 other appropriate official, of at least one state that it satisfied
19 the capitalization requirements of that state, except that any
20 such group shall be considered to be a risk retention group only if
21 it has been engaged in business continuously since that date and
22 only for the purpose of continuing to provide insurance to cover
23 product liability or completed operations liability, as defined in
24 the federal "Product Liability Risk Retention Act of 1981,"
25 Pub.L.97-45 (15 U.S.C.§3901 et seq.), before October 27, 1986;
26 which does not exclude any person from membership in the group
27 solely to provide for members of that group a competitive
28 advantage over such a person; which has as its owners only
29 persons who comprise the membership of the risk retention group
30 and who are provided insurance by such group, or has as its sole
31 owner an organization which has as its members only persons who
32 comprise the membership of the risk retention group and its
33 owners are the only persons who comprise the membership of the
34 risk retention group and who are provided insurance by such
35 group; whose members are engaged in businesses or activities
36 similar or related with respect to the liability to which those
37 members are exposed by virtue of any related, similar or common
38 business, trade, product, services, premises or operations; whose
39 activities do not include the provision of insurance, other than
40 liability insurance for assuming and spreading all or any portion
41 of the liability of its group members, and reinsurance with
42 respect to the similar or related liability exposure of any other
43 risk retention group, or any member of any other group, which is
44 engaged in businesses or activities so that this group or member
45 meets the requirement that members are engaged in businesses or
46 activities similar or related with respect to the liability to which
47 those members are exposed by virtue of any related, similar or
48 common business, trade, product, services, premises or operations
49 for membership in the risk retention group which provides the
50 reinsurance; and the name of which includes the phrase "risk
51 retention group."

52 "Self-insured retention" means any fund or other arrangement
53 to pay claims other than by an insurer, or any arrangement under
54 which an insurer has no obligation to pay claims on behalf of an

1 insured if it is not reimbursed by the insured.

2 "Similar insurance source" means an insurer authorized or
3 admitted to do business in this State or a non-authorized surplus
4 lines insurer eligible to do business in this State.

5 "Special risk" means a commercial lines insurance risk as
6 specified on a list promulgated by the commissioner, which is of
7 an unusual nature or high loss hazard or is difficult to place or
8 rate, or which is excess or umbrella, or which is eligible for
9 export; or a commercial lines insurance risk which produces
10 minimum annual premium in excess of \$10,000. Additions or
11 deletions to the list promulgated may be made by the
12 commissioner without a hearing upon notice to all licensed
13 insurers.

14 "State" means this State, any other state of the United States
15 or the District of Columbia.

16 3. a. Any person wishing to establish a risk retention group
17 chartered and licensed to write only liability insurance in this
18 State shall, in addition to meeting the requirements pursuant to
19 R.S. 17:17-1 et seq., submit to the commissioner, on a form
20 prescribed by the commissioner, a plan of operation or feasibility
21 study. The risk retention group shall submit an appropriate
22 revision in the event of any subsequent material change in any
23 item of the plan of operation or feasibility study, within 10 days
24 of any such change. The group shall not offer any additional
25 kinds of liability insurance in this State, or in any other state,
26 until a revision of such plan or study is approved by the
27 commissioner.

28 b. At the time of filing its application for charter, the risk
29 retention group shall provide to the commissioner in summary
30 form the following information, upon receipt of which the
31 commissioner shall forward this information to the National
32 Association of Insurance Commissioners:

- 33 (1) the identity of the initial members of the group;
34 (2) the identity of those individuals who organized the group or
35 who will provide administrative services or otherwise influence or
36 control the activities of the group;
37 (3) the amount and nature of initial capitalization;
38 (4) the coverages to be afforded; and
39 (5) the states in which the group intends to operate.

40 Providing this information to the National Association of
41 Insurance Commissioners is in addition to, and shall not be
42 deemed to satisfy, the requirements of this act.

43 c. Each risk retention group chartered in this State pursuant to
44 this act shall be chartered and licensed to write only liability
45 insurance in this State as provided in R.S.17:17-1 et seq., and is
46 subject to the provisions of R.S.17:17-1 et seq. to the extent it is
47 applied to insurers chartered and licensed in this State.

48 d. Notwithstanding any other provision of law to the contrary,
49 all risk retention groups chartered in this State shall file an
50 annual statement in the form adopted by the National Association
51 of Insurance Commissioners and completed in accordance with its
52 instructions and the National Association of Insurance
53 Commissioners Accounting Practices and Procedures Manual and
54 all applicable statutes and administrative rules. Additionally, all

1 risk retention groups chartered in this State shall file quarterly
2 statements covering the periods ending on March 31, June 30, and
3 September 30, which statements shall be filed within 45 days
4 after the end of each quarterly period. Quarterly statements
5 shall be confidential and shall not be subject to public inspection
6 or copying pursuant to the provisions of P.L.1983, c.73 (C.
7 47:1A-1 et seq.).

8 e. Every risk retention group chartered in this State shall
9 provide the following notice in 10-point, boldface type, in every
10 policy of insurance issued by the group:

11

12 **"NOTICE**

13 **This policy is issued by your risk retention group. Your risk**
14 **retention group may not be subject to all of the insurance laws**
15 **and regulations of your state.**

16 **State insolvency guaranty funds are not available for your risk**
17 **retention group."**

18

19 4. a. Each risk retention group which is licensed under the
20 laws of any other state and which seeks to do business as a risk
21 retention group in this State shall, before doing business in this
22 State, submit to the commissioner:

23 (1) A statement identifying the state or states in which the
24 risk retention group is chartered and licensed as a liability
25 insurance company, the date of its charter and admission as a
26 licensed insurer and its principal place of business;

27 (2) A copy of its plan of operation or feasibility study and
28 revisions of such plan or study submitted to the state or states in
29 which the risk retention group is chartered and licensed, except
30 that the provision relating to a plan of operation or feasibility
31 study shall not apply with respect to any line or classification of
32 liability insurance which:

33 (a) was defined in the "Product Liability Risk Retention Act of
34 1981," Pub.L.97-45 (15 U.S.C. §3901 et seq.), before October 27,
35 1986; and

36 (b) was offered before such date by any risk retention group
37 which had been chartered and operating for not less than three
38 years before such date.

39 The risk retention group shall submit a copy of any revision to
40 its plan of operation or feasibility study required by this
41 subsection at the same time such revision is submitted to the
42 commissioner of its chartering state;

43 (3) A statement of registration, for which a filing fee shall be
44 established by the commissioner, which designates the
45 commissioner as its agent for the purpose of receiving service of
46 legal documents or process; and

47 (4) Any other information, including information regarding
48 membership, which may be required by the commissioner to
49 verify that the risk retention group is qualified under the

1 definition of "risk retention group" pursuant to section 2 of this
2 act.

3 b. No risk retention group may offer any kind of liability
4 insurance in this State until it is notified by the commissioner
5 that the risk retention group is qualified under the definition of
6 "risk retention group" pursuant to section 2 or this act.

7 c. Each risk retention group which has received notice of
8 qualification from the commissioner to do business in this State
9 shall submit to the commissioner on a reasonable and timely basis:

10 (1) A copy of the group's annual financial statement submitted
11 to the state in which the risk retention group is chartered and
12 licensed as an insurance company, which shall be certified by an
13 independent certified public accountant, and contain an opinion
14 on loss and loss adjustment expense reserves made by a member
15 of the American Academy of Actuaries or a qualified loss reserve
16 specialist acceptable to the commissioner;

17 (2) A copy of each examination of the risk retention group as
18 certified by the chartering state's commissioner or public
19 official conducting the examination;

20 (3) Upon request of the commissioner, a copy of any
21 information or document pertaining to any outside audit
22 performed with respect to the risk retention group;

23 (4) An annual financial statement filing fee in an amount
24 established by the commissioner; and

25 (5) Such additional information as may be required to verify its
26 continuing qualification as a risk retention group pursuant to the
27 definition of "risk retention group" in section 2 of this act;

28 d. To the extent that licensed insurance producers are utilized
29 by a risk retention group pursuant to this act, those producers
30 shall keep a complete and separate record of all policies procured
31 from each such risk retention group, which records shall be open
32 to examination by the commissioner, as provided in Title 17 of
33 the Revised Statutes. These records shall, for each policy and for
34 each kind of insurance provided thereunder, include the following:

35 (1) the limit of liability;

36 (2) the time period covered;

37 (3) the effective date;

38 (4) the name of the risk retention group which issued the
39 policy;

40 (5) the gross premium charged; and

41 (6) the amount of return premiums if any.

42 e. Each risk retention group, its agents and representatives
43 shall comply with the requirements governing the settlement of
44 claims set forth in section 4 of P.L.1947, c.379 (C.17:29B-4), and
45 any other State law regarding deceptive, false or fraudulent acts
46 or practices.

47 f. Each risk retention group shall submit to an examination by
48 the commissioner to determine its financial condition, if the
49 commissioner or other appropriate official of the jurisdiction in
50 which the group is chartered and licensed has not initiated an
51 examination or does not initiate an examination within 60 days
52 after a request by the commissioner of this State. Any such
53 examination shall be coordinated to avoid unjustified repetition
54 and conducted in an expeditious manner and in accordance with

1 the National Association of Insurance Commissioners' Examiner
2 Handbook. The risk retention group shall pay the reasonable
3 expenses of an examination upon presentation by the
4 commissioner of a detailed account of the expenses.

5 g. Every application form for insurance from a risk retention
6 group, and every policy issued by a risk retention group, on its
7 front and declaration pages, shall contain in 10-point, boldface
8 type the following notice:
9

10 **"NOTICE**

11 This policy is issued by your risk retention group. Your risk
12 retention group may not be subject to all of the insurance laws
13 and regulations of your state.

14 State insolvency guaranty funds are not available for your risk
15 retention group."
16

17 h. Each risk retention group shall comply with any lawful order
18 issued in a voluntary dissolution proceeding or in a delinquency
19 proceeding commenced by the commissioner pursuant to the laws
20 governing the rehabilitation, liquidation, or conservation of assets
21 of insurers, if there has been a finding of financial impairment
22 after an examination pursuant to this section.

23 i. Each risk retention group shall comply with an injunction
24 issued by a court of competent jurisdiction upon a petition by the
25 commissioner alleging that the group is in a hazardous financial
26 condition or is financially impaired.

27 5. a. No risk retention group, whether chartered in this State
28 or another state, shall:

29 (1) Solicit the sale of or sell insurance to any person who is not
30 eligible for membership in the group;

31 (2) Solicit the sale of or sell insurance if it is deemed to be in
32 a hazardous condition or financially impaired;

33 (3) Sell or offer for sale any insurance coverage which is not
34 permitted by the provisions of Title 17 of the Revised Statutes or
35 which is declared unlawful by the highest court of this State; or

36 (4) Be owned by or controlled directly or indirectly by an
37 insurer, or have an insurer as a member, except that this shall not
38 apply in the case of a risk retention group in which all the
39 members are insurers.

40 b. Notwithstanding the provisions of any other law to the
41 contrary, no policy of insurance issued by a risk retention group,
42 whether chartered in this State or otherwise, shall be required to
43 be countersigned by an insurance producer residing in this State.

44 c. All premiums paid to risk retention groups not chartered in
45 this State for coverage on risks within this State are subject to
46 taxation at the same rate and are subject to the same interest,
47 fines and penalties for nonpayment as that taxation which is
48 applicable to surplus lines insurers. All premiums paid to risk
49 retention groups chartered in this State for coverage on risks

1 within this State are subject to taxation at the same rate and
2 shall be subject to the same interest, fines, and penalties for
3 nonpayment as that taxation which is applicable to foreign
4 admitted insurers.

5 d. Each risk retention group, whether chartered in this State
6 or otherwise, shall report all premiums paid to it which are
7 attributable to risks insured within this State and shall remit the
8 taxes owed on such premiums to, and on a form and in a manner
9 required by, the Director of the Division of Taxation, in
10 consultation with the commissioner.

11 6. In addition to complying with the applicable provisions of
12 this act, any risk retention group doing business in this State prior
13 to effective date of this act shall, within 90 days of that date,
14 submit to the commissioner the information set forth in
15 subsection a. of section 4 of this act.

16 7. a. Only a group of persons with similar exposure to risk
17 may form a purchasing group for the purpose of purchasing
18 liability insurance. A purchasing group and its insurer or insurers
19 shall be subject to all applicable laws of this State, except that a
20 purchasing group and its insurer or insurers shall be exempt, in
21 regard to liability insurance for the purchasing group, from any
22 law that would:

23 (1) Prohibit the establishment of a purchasing group;

24 (2) Make it unlawful for an insurer to provide or offer to
25 provide insurance on a basis providing, to a purchasing group or
26 its members, advantages based on their loss and expense
27 experience not afforded to other persons with respect to rates,
28 policy forms, coverages or other matters;

29 (3) Prohibit a purchasing group or its members from purchasing
30 insurance on a group basis described in paragraph (2) of this
31 subsection;

32 (4) Prohibit a purchasing group from obtaining insurance on a
33 group basis because the group has not been in existence for a
34 minimum period of time or because any member has not belonged
35 to the group for a minimum period of time;

36 (5) Require that a purchasing group have a minimum number of
37 members, common ownership or affiliation, or certain legal forms;

38 (6) Require that a certain percentage of a purchasing group
39 obtain insurance on a group basis;

40 (7) Otherwise discriminate against a purchasing group or any
41 of its members; or

42 (8) Require that any insurance policy issued to a purchasing
43 group or to any of its members be countersigned by an insurance
44 producer residing in this State.

45 b. Each purchasing group with members located in this State
46 shall, before doing business in this State, register with the
47 commissioner, on a form prescribed by the commissioner, which
48 form shall:

49 (1) Identify the state in which the group is domiciled;

50 (2) Identify all other states in which the group intends to do
51 business;

52 (3) Specify the lines and classifications of liability insurance
53 which the purchasing group intends to purchase;

54 (4) Identify the insurer or insurers from which the group

1 intends to purchase its insurance and the domicile of that insurer;
2 (5) Specify the method by which, and the person or persons, if
3 any, through whom insurance will be offered to its members
4 whose risks are resident or located in this State;

5 (6) Identify the principal place of business of the group; and

6 (7) Provide any other information as may be required by the
7 commissioner to verify that the purchasing group is qualified
8 according to the definition of "purchasing group" under section 2
9 of this act.

10 A purchasing group shall, within 10 days, notify the
11 commissioner of any changes in any of the items set forth in this
12 subsection.

13 c. The application for registration shall be accompanied by a
14 registration fee in an amount established by the commissioner.

15 d. Each purchasing group registered pursuant to this section
16 shall submit to the commissioner from time to time, as he may
17 require, reports relative to the group's operations, including, but
18 not limited to, information required by the commissioner to:

19 (1) verify that the entity qualifies as a purchasing group;

20 (2) determine where the purchasing group is located; and

21 (3) determine the appropriate tax treatment.

22 e. Each purchasing group registered pursuant to this section
23 shall be subject to audits or examinations as the commissioner
24 may deem necessary.

25 f. No purchasing group with members located in this State
26 shall solicit business in this State, nor shall any person solicit,
27 negotiate or effect a contract of insurance or accept any fee or
28 commission on a risk located in this State which is to be effected
29 through a purchasing group unless the purchasing group is notified
30 by the commissioner that it is registered pursuant to the
31 provisions of this section.

32 g. Each purchasing group with members located in this State
33 shall file a statement with the commissioner which designates the
34 commissioner as agent of the purchasing group for service of
35 legal documents or service of process, except that this shall not
36 apply in the case of any purchasing group which only purchases
37 insurance that was authorized under the federal "Product
38 Liability Risk Retention Act of 1981," Pub.L.97-45 (15 U.S.C.
39 §3901 et seq.), which:

40 (1) Was domiciled prior to April 1, 1986 and is domiciled on or
41 after October 27, 1986 in any state of the United States;

42 (2) Prior to October 27, 1986, purchased insurance from an
43 insurance carrier licensed in any state and since October 27, 1986,
44 purchased its insurance from an insurance carrier licensed in any
45 state; or

46 (3) Was a purchasing group pursuant to the provisions of the
47 "Product Liability Risk Retention Act of 1981," Pub.L.97-45 (15
48 U.S.C. §3901 et seq.), before October 27, 1986.

49 h. Any purchasing group which was doing business in this State
50 prior to the enactment of this act shall, within 90 days after the
51 effective date of this act, register with the commissioner
52 pursuant to the provisions of subsection b. of this section and
53 comply with the requirements of subsection g. of this section.

54 8. a. No purchasing group doing business in this State shall

1 purchase or maintain insurance covering its members located in
2 this State from a risk retention group that is not chartered in this
3 State, or from an insurer that is not authorized or admitted
4 pursuant to Title 17 of the Revised Statutes to write insurance in
5 this State, unless the purchase is from a risk retention group
6 registered pursuant to section 4 of this act or a surplus lines
7 insurer deemed eligible and placed pursuant to "the surplus lines
8 law," P.L.1960, c.32 (C.17:22-6.40 et seq.).

9 b. No purchasing group doing business in this State shall
10 purchase or maintain any insurance covering its members located
11 in this State which provides for a deductible or a self-insured
12 retention applicable to the group as a whole, unless the
13 deductible or self-insured retention is the sole responsibility of
14 the individual members of the purchasing group.

15 c. No purchasing group doing business in this State shall
16 purchase or maintain a policy of insurance covering its members
17 located in this State which is retrospectively rated unless either:

18 (1) The retrospective premium is charged to each member
19 based solely on that member's claims; or

20 (2) The retrospective premium payable by the group is subject
21 to a provision which provides for a maximum premium payable by
22 the group. The maximum premium shall be established so that
23 there is at least a 10% actuarial probability that the premium
24 otherwise payable will exceed the maximum premium.

25 d. No purchasing group doing business in this State may
26 purchase or maintain a policy of insurance covering its members
27 located in this State unless the policy form or contract complies
28 with P.L.1982, c.114 (C.17:29AA-1 et seq.) if the insurer is an
29 authorized or admitted insurer, or section 9 of P.L.1960 c.32
30 (C.17:22-6.43) if the insurer is an eligible surplus lines insurer.

31 e. No purchasing group doing business in this State shall
32 purchase insurance coverage with rates in this State which are
33 less than the lowest rate approved by the commissioner for use by
34 any authorized or admitted insurer for similar risks, except that
35 this provision does not apply to special risks as defined in section
36 3 of P.L.1982, c.114 (C.17:29AA-3). The purchasing group may
37 purchase insurance coverage with any premium modification plan
38 on file and in actual use by an authorized or admitted insurer for
39 similar risks. The commissioner may authorize the purchasing
40 group to purchase insurance coverage with a lower rate or
41 different premium modification plan if the group demonstrates to
42 the commissioner's satisfaction that the exposure and experience
43 of the group's members in this State justify a lower rate or
44 different premium modification plan.

45 f. Each purchasing group doing business in this State shall
46 report all premiums paid to it which are attributable to risks
47 within the State, on a form and in a manner provided by the
48 commissioner. Premium taxes and taxes on premiums paid for
49 coverage of risks resident or located in this State by a purchasing
50 group or any members of the purchasing group are imposed upon
51 the group's insurer at the same rate and subject to the same
52 interest, fines and penalties as that applicable to premium taxes
53 and taxes on premiums paid for similar coverage from a similar
54 insurance source by other insureds.

1 g. A purchasing group which obtains liability insurance from a
2 risk retention group shall inform each of the members of the
3 group which have a risk resident or located in this State that the
4 risk is not protected by an insurance insolvency guaranty fund in
5 this State, and that the risk retention group may not be subject to
6 all insurance laws and regulations of this State.

7 9. No risk retention group, whether domiciled in this State or
8 otherwise, shall be eligible to become a member of, contribute
9 to, or derive any benefit from, the New Jersey Property-Liability
10 Insurance Guaranty Association established pursuant to the
11 provisions of P.L.1974, c.17 (C.17:30A-1 et seq.) or the New
12 Jersey Surplus Lines Insurance Guaranty Fund established
13 pursuant to the provisions of P.L.1984, c.101 (C.17:22-6.70 et
14 seq.).

15 10. a. No person, firm, association or corporation shall act or
16 aid in any manner in soliciting, negotiating, procuring or
17 effecting liability insurance in this State from a risk retention
18 group unless that person, firm, association or corporation is
19 licensed as an insurance producer in accordance with the
20 provisions of P.L.1987, c.293 (C.17:22A-1 et seq.) and all rules
21 and regulations promulgated thereunder.

22 b. No person, firm, association or corporation shall act or aid
23 in any manner in soliciting, negotiating, procuring or effecting
24 liability insurance in this State for a purchasing group from an
25 authorized insurer or risk retention group chartered in a state
26 unless that person, firm, association or corporation is licensed as
27 an insurance producer in accordance with P.L.1987, c.293
28 (C.17:22A-1 et seq.) and all rules and regulations promulgated
29 thereunder.

30 c. No person, firm, association or corporation shall act or aid
31 in any manner in soliciting, negotiating, procuring or effecting
32 liability insurance coverage in this State for any member of a
33 purchasing group under a purchasing group's policy unless that
34 person, firm, association or corporation is licensed as an
35 insurance producer in accordance with P.L.1987, c.293,
36 (C.17:22A-1 et seq.) and all rules and regulations promulgated
37 thereunder.

38 d. No person, firm, association or corporation shall act or aid
39 in any manner in soliciting, negotiating, procuring or effecting
40 liability insurance from an insurer not authorized to do business
41 in this State on behalf of a purchasing group with members
42 located in this State unless that person, firm, association or
43 corporation is licensed as a surplus lines agent in accordance with
44 P.L.1987, c.293 (C.17:22A-1 et seq.) and "the surplus lines law,"
45 P.L. 1960, c.32 (C.17:22-6.40 et seq.) and all rules and regulations
46 promulgated thereunder.

47 e. For purposes of acting as an insurance producer for a risk
48 retention group or purchasing group pursuant to this section, the
49 requirement of residence or maintenance of an office in this
50 State shall not apply, except in the case of a licensed surplus
51 lines agent.

52 f. Every person, firm, association or corporation licensed
53 pursuant to the provisions of P.L.1987, c.293 (C.17:22A-1 et
54 seq.), on business placed with risk retention groups or written

1 through a purchasing group, shall inform each prospective insured
2 of the provisions of the notice required by subsection e. of
3 section 3 and subsection g. of section 4 of this act.

4 11. a. Each risk retention group, whether chartered in this
5 State or otherwise, is subject to the same fines and penalties to
6 which insurers licensed in this State are subject for any violation
7 of this act or any other applicable law.

8 b. Failure of a purchasing group doing business in this State to
9 comply with the provisions of this act may, after notice and an
10 opportunity for a hearing, result in the revocation or suspension
11 of its registration in this State. As an alternative or in addition
12 to any other penalty, the commissioner may impose a fine of up
13 to \$5,000 for the first violation, and for each subsequent
14 violation, a fine not to exceed \$10,000, and in appropriate
15 circumstances may order the restitution of moneys owed to any
16 person and reimbursement of the costs of investigation and
17 prosecution.

18 12. The commissioner may, pursuant to the "Administrative
19 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), promulgate
20 rules and regulations necessary to effectuate the purposes of this
21 act.

22 13. This act shall take effect immediately.

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25 STATEMENT

26
27 This bill, which is based upon a model law by the National
28 Association of Insurance Commissioners, provides a framework by
29 which this State may regulate risk retention groups and
30 purchasing groups. These mechanisms were authorized under
31 federal legislation to provide an alternative to the traditional
32 insurance market because of the of lack of availability of product
33 liability insurance in the 1970's. The federal "Product Liability
34 Risk Retention Act of 1981," 15 U.S.C. §3901 et seq., as amended
35 in 1986, permits the formation of risk retention groups and
36 purchasing groups. A risk retention group is a corporation or
37 other association which is licensed as an insurance company in at
38 least one state of the United States. A purchasing group is
39 formed by a group of persons with similar exposure to risk which
40 purchases liability insurance for its group members.

41 The regulatory framework established by this bill will enable
42 the Commissioner of Insurance to regulate the conduct of risk
43 retention groups and purchasing groups doing business in this
44 State, and to ensure that they are in compliance with applicable
45 laws of this State, to the extent such laws are not preempted by
46 the federal legislation.

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51 "New Jersey Risk Retention Act."

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51 "New Jersey Risk Retention Act."

ASSEMBLY INSURANCE COMMITTEE

STATEMENT TO

ASSEMBLY, No. 81

STATE OF NEW JERSEY

DATED: MARCH 29, 1993

The Assembly Insurance Committee reports favorably Assembly Bill No. 81.

This bill, which is based upon a model law by the National Association of Insurance Commissioners, provides a framework by which this State may regulate risk retention groups and purchasing groups. These mechanisms were authorized under federal legislation to provide an alternative to the traditional insurance market because of the of lack of availability of product liability insurance in the 1970's. The federal "Product Liability Risk Retention Act of 1981," 15 U.S.C. §3901 et seq., as amended in 1986, permits the formation of risk retention groups and purchasing groups. A risk retention group is a corporation or other association which is licensed as an insurance company in at least one state of the United States. A purchasing group is formed by a group of persons with similar exposure to risk which purchases liability insurance for its group members.

The regulatory framework established by this bill will enable the Commissioner of Insurance to regulate the conduct of risk retention groups and purchasing groups doing business in this State, and to ensure that they are in compliance with applicable laws of this State, to the extent such laws are not preempted by the federal legislation.

SENATE COMMERCE COMMITTEE

STATEMENT TO

ASSEMBLY, No. 81

STATE OF NEW JERSEY

DATED: MAY 27, 1993

The Senate Commerce Committee reports favorably Assembly Bill No. 81.

This bill, which is based upon a model law by the National Association of Insurance Commissioners, provides a framework by which this State may regulate risk retention groups and purchasing groups. These mechanisms were authorized under federal legislation to provide an alternative to the traditional insurance market because of the of lack of availability of product liability insurance in the 1970's. The federal "Product Liability Risk Retention Act of 1981," 15 U.S.C. §3901 et seq., as amended in 1986, permits the formation of risk retention groups and purchasing groups. A risk retention group is a corporation or other association which is licensed as an insurance company in at least one state of the United States. A purchasing group is formed by a group of persons with similar exposure to risk which purchases liability insurance for its group members.

The regulatory framework established by this bill will enable the Commissioner of Insurance to regulate the conduct of risk retention groups and purchasing groups doing business in this State, and to ensure that they are in compliance with applicable laws of this State, to the extent such laws are not preempted by the federal legislation.

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OFFICE OF THE GOVERNOR NEWS RELEASE

GN-001

TRENTON, N.J. 08625

FOR RELEASE: August 9, 1993

CONTACT: Jon Shure
(609) 777-2600

Peter Cammarano
(609) 633-3955

GOVERNOR FLORIO SIGNS FINANCIAL SOLVENCY LEGISLATION

Governor Jim Florio today signed legislation that will increase the New Jersey Insurance Department's effectiveness in monitoring the industry's financial activities.

The 12-bill package adopts the insurer solvency standards recommended by the National Association of Insurance Commissioners (NAIC).

Under the NAIC Accreditation Program, state insurance departments must be accredited by January 1, 1994. Accredited states will not be permitted to accept financial examinations of domestic insurance companies by non-accredited states. An independent audit team will review New Jersey's standards to ensure their compliance with the program.

"This legislation will strengthen the Insurance Department's ability to regulate the industry and to take preventive measures if companies experience financial difficulties," Governor Florio said. "The citizens of New Jersey can rest assured that the NAIC Accreditation Program will enhance the capabilities of a department which already is one of the most proactive consumer protection agencies in the country."

Insurance Commissioner Samuel F. Fortunato praised the efforts of Governor Florio and several members of the State Legislature in adopting the legislation.

"We are grateful to the Governor and members of the Legislature for acting quickly on these bills," Fortunato stated. "Their support and sponsorship of vital elements of this package have shown that great things may be accomplished through a true team effort."

Failure to receive accreditation could have affected New Jersey's 27 domestic property and casualty companies and 12 life and health insurers. These companies would be subject to accredited state insurance departments' audits at the companies' expense. These additional costs ultimately would be passed on to policyholders.

The NAIC accreditation audit team is tentatively scheduled to review the state's financial solvency standards in October.

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MODEL RISK RETENTION ACT

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Section 1. Purpose

The purpose of this Act is to regulate the formation and/or operation of risk retention groups and purchasing groups in this State formed pursuant to the provisions of the federal Liability Risk Retention Act of 1986 ("RRA 1986"), to the extent permitted by such law.

Section 2. Definitions

As used in this Act

- A. "Commissioner" [director, superintendent] means the insurance commissioner [director, superintendent] of [insert name of state] or the commissioner, director or superintendent of insurance in any other state;
- B. "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
 - (1) Any person who performs that work; or
 - (2) Any person who hires an independent contractor to perform that work; but shall include liability for activities which are completed or abandoned before the date of the occurrence giving rise to the liability;

Drafting Note: The definition of "completed operations liability" is taken from the definition in the Product Liability Risk Retention Act of 1981 (Product Liability RRA 1981) Section 2(a)(1). A purpose of RRA 1986 was to expand the permissible coverage offered by risk retention groups from product liability and completed operations to general liability insurance, as further defined in RRA 1986. Some risk retention groups that were chartered under the Product Liability RRA 1981 are "grandfathered" by RRA 1986 to the extent that they can continue to provide product liability and completed operations coverage if they meet the criteria established by RRA 1986. The definitions relating to product liability and completed operations coverage, therefore, are relevant to any such groups which may continue to so operate.

- C. "Domicile," for purposes of determining the state in which a purchasing group is domiciled, means

Model Risk Retention Act

- (1) For a corporation, the state in which the purchasing group is incorporated; and
 - (2) For an unincorporated entity, the state of its principal place of business;
- D. "Hazardous financial condition" means that, based on its present or reasonably anticipated financial condition, a risk retention group, although not yet financially impaired or insolvent, is unlikely to be able
- (1) To meet obligations to policyholders with respect to known claims and reasonably anticipated claims; or
 - (2) To pay other obligations in the normal course of business;

Drafting Note: The definition of "hazardous financial condition" stipulates that a regulator, in looking at the financial condition of a risk retention group, can base his conclusions on reasonable expectations of future performance. In determining the present or reasonably anticipated financial condition of a risk retention group, the commissioner may utilize all relevant financial tests, ratios and other factors used in determining the financial condition of authorized insurers, including an analysis of actuarial soundness of rates charged.

- E. "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;

Drafting Note: Definition taken from RRA 1986 Section 2(a)(1).

F. "Liability"

- (1) Means legal liability for damages (including costs of defense, legal costs and fees, and other claims expenses) because of injuries to other persons, damage to their property, or other damage or loss to such other persons resulting from or arising out of
 - (a) Any business (whether profit or nonprofit), trade, product, services (including professional services), premises or operations; or
 - (b) Any activity of any state or local government, or any agency or political subdivision thereof; and

Drafting Note: A state may specify acceptable means for managing the liability of the state or its local governments, or any agency or political subdivision thereof, by including or excluding insurance coverage obtained from an admitted insurance company, an excess lines company, a risk retention group, or any other source; or through a broker, agent, purchasing group, or any other person. Similarly, a state may specify acceptable means of demonstrating financial responsibility as a condition for obtaining a license or permit to undertake specified activities pursuant to Section 6(d), RRA 1986.

- (2) Does not include personal risk liability and an employer's liability with respect to its employees other than legal liability under the Federal Employers' Liability Act (45 U.S.C. 51 et seq.);
- G. "Personal risk liability" means liability for damages because of injury to any person, damage to property, or other loss or damage resulting from any personal, familial, or household responsibilities or activities, rather than from responsibilities or activities referred to in Subsection F;
- H. "Plan of operation" or "feasibility study" means an analysis which presents the expected activities and results of a risk retention group including, at a minimum;
- (1) 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;

- (2) 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;
 - (3) Historical and expected loss experience of the proposed members and national experience of similar exposures to the extent that this experience is reasonably available;
 - (4) Pro forma financial statements and projections;
 - (5) 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;
 - (6) Identification of management, underwriting and claims procedures, marketing methods, managerial oversight methods, investment policies and reinsurance agreements;
 - (7) Identification of each state in which the risk retention group has obtained, or sought to obtain, a charter and license, and a description of its status in each such state; and
 - (8) Such other matters as may be prescribed by the commissioner of the state in which the risk retention group is chartered for liability insurance companies authorized by the insurance laws of that state;
- I. "Product liability" means liability for damages because of any 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 any person for those damages if the product involved was in the possession of such a person when the incident giving rise to the claim occurred;

Drafting Note: The definition of "product liability" is identical to that contained in Product Liability RRA 1981, Section 2(a)(3), for a "grandfathered" risk retention group. See Drafting Note following Subsection 2B of this Act.

J. "Purchasing group" means any group which

- (1) Has as one of its purposes the purchase of liability insurance on a group basis;
- (2) Purchases such insurance only for its group members and only to cover their similar or related liability exposure, as described in Paragraph (3);
- (3) Is composed of members whose businesses or activities are similar or related with respect to the liability to which members are exposed by virtue of any related, similar, or common business, trade, product, services, premises, or operations; and
- (4) Is domiciled in any state;

Drafting Note: The Product Liability RRA 1981 contained a very loose definition of "purchasing group." RRA 1986 offers a more restrictive definition of those groups that can qualify as "purchasing groups." A purchasing group must only offer liability insurance to its group members, and the insurance must cover their similar or related liability exposure. Further, the group members must have businesses or activities that are similar or related with respect to the liability to which group members are exposed. Finally, the purchasing group must be domiciled in one of the states of the United States, i.e., it cannot be domiciled offshore.

K. "Risk retention group" means any corporation or other limited liability association:

- (1) Whose primary activity consists of assuming and spreading all, or any portion, of the liability exposure of its group members;
- (2) Which is organized for the primary purpose of conducting the activity described under Paragraph (1);
- (3) Which
 - (a) Is chartered and licensed as a liability insurance company and authorized to engage in the business of insurance under the laws of any state; or
 - (b) Before January 1, 1985 was chartered or licensed and authorized to engage in the business of insurance under the laws of Bermuda or the Cayman Islands and, before such date, had certified to the insurance commissioner of at least one state that it satisfied the capitalization requirements of such state, except that any such group shall be considered to be a risk retention group only if it has been engaged in business continuously since that date and only for the purpose of continuing to provide insurance to cover product liability or completed operations liability (as such terms were defined in the Product Liability Risk Retention Act of 1981 before the date of the enactment of the Liability Risk Retention Act of 1986);
- (4) Which does not exclude any person from membership in the group solely to provide for members of such a group a competitive advantage over such a person;
- (5) Which
 - (a) Has as its owners only persons who comprise the membership of the risk retention group and who are provided insurance by such group; or
 - (b) Has as its sole owner an organization which has as
 - (i) Its members only persons who comprise the membership of the risk retention group; and
 - (ii) Its owners only persons who comprise the membership of the risk retention group and who are provided insurance by such group;
- (6) Whose members are engaged in businesses or activities similar or related with respect to the liability of which such members are exposed by virtue of any related, similar or common business trade, product, services, premises or operations;
- (7) Whose activities do not include the provision of insurance other than
 - (a) Liability insurance for assuming and spreading all or any portion of the liability of its group members; and
 - (b) Reinsurance with respect to the liability of any other risk retention group (or any members of such other group) which is engaged in businesses or activities so that the group or member meets the requirement described in Paragraph 6 from membership in the risk retention group which provides such reinsurance; and
- (8) The name of which includes the phrase "Risk Retention Group";

Drafting Note: RRA 1986 changes the definition of "risk retention group" by further restricting the permissible membership and its activities. A risk retention group must be chartered and licensed as a liability insurance company and authorized to engage in the business of insurance under the laws of one of the fifty states unless it qualifies under the "grandfather" provision of Subsection K(3)(b). In that event, it may only continue to provide product liability or completed operation coverage.

Each of the members of the group must have an "ownership interest" in the group. In addition, all owners must be provided insurance by the group. One purpose of this requirement is to prevent participation by third parties which may not be interested in the specific insurance problems of group members but merely may be interested in making a profit. The single exception to this requirement is when the sole member and sole owner of the organization is an entity consisting of persons, each of whom is a member of the risk retention group and is provided insurance by the group.

The members "who are also the owners" are required to be engaged in businesses or activities "similar or related with respect to the liability to which they are exposed by virtue of any related, similar, or common business, trade, product, services, premises or operation." This restriction is for the purpose of requiring substantial identity among the members (who are also the owners and insureds) in regard to the nature of the risks faced.

A risk retention group may not provide insurance other than liability insurance. Further, it can only provide reinsurance to another risk retention group if all of that group's members would qualify for membership in the risk retention group offering the reinsurance. This provision was designed to restrict a risk retention group to only reinsuring its own risks or the similar risks of similarly situated businesses. For example, a risk retention group whose membership consists of grocery store owners, could not reinsure a risk retention group whose membership consists of hazardous waste transporters.

The risk retention group must be chartered and licensed as a liability insurance company and authorized to engage in the business of insurance under the laws of one of the fifty states unless it qualifies under the "grandfather" provision of Subsection K(3)(b).

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

Section 3. Risk Retention Groups Chartered in this State

- A. (1) A risk retention group shall, pursuant to the provisions of Section [insert appropriate reference to Insurance Law], be chartered and licensed to write only liability insurance pursuant to this Act and, except as provided elsewhere in this Act, must comply with all of the laws, rules, regulations and requirements applicable to insurers chartered and licensed in this state and with Section 4 of this Act to the extent such requirements are not a limitation on laws, rules, regulations or requirements of this state.
- (2) Notwithstanding any other provision to the contrary, all risk retention groups chartered in this state shall file with the department and the National Association of Insurance Commissioners (NAIC), an annual statement in a form prescribed by the NAIC and in diskette form, if required by the Commissioner and completed in accordance with its instructions and the NAIC Accounting Practices and Procedures Manual.
- B. Before it may offer insurance in any state, each risk retention group shall also submit for approval to the insurance commissioner of this state a plan of operation or feasibility study. The risk retention group shall submit an appropriate revision in the event of any subsequent material change in any item of the plan of operation or feasibility study, within ten (10) days of any such change. The group shall not offer any additional kinds of liability insurance, in this state or in any other state, until a revision of the plan or study is approved by the commissioner.
- C. At the time of filing its application for charter, the risk retention group shall provide to the commissioner in summary form the following information: the identity of the initial members of the group, the identity of those individuals who organized the group or who will provide administrative services or otherwise influence or control the activities of the group, the amount and nature of initial capitalization, the coverages to be afforded, and the states in which the group intends to operate. Upon receipt of this information, the commissioner shall forward the information to the National Association of Insurance Commissioners.

Providing notification to the NAIC is in addition to and shall not be sufficient to satisfy the requirements of Section 4 or any other sections of this Act.

Drafting Note: RRA 1986 allows for the chartering state to apply the full range of its insurance laws to a risk retention group wishing to charter in that state, except for requiring participation in the guaranty fund. The language of this section is derived from Product Liability RRA 1981 Section 3(a)(1) (which was not amended by RRA 1986 as it relates to this issue). The function of the office of the National Association of Insurance Commissioners shall be solely to provide administrative services for its member states and territories. Although RRA 1986 specifically requires that the phrase "Risk Retention Group" be included in the name, the chartering state is not precluded from prohibiting the use of deceptive or misleading words, designations or phrases in the name. Further, a state may require a risk retention group it charters and licenses to locate books and records or administrative functions within that state to the same extent it imposes those requirements on its domestic insurers.

Section 4. Risk Retention Groups Not Chartered in this State

Risk retention groups chartered and licensed in states other than this state and seeking to do business as a risk retention group in this state shall comply with the laws of this state as follows:

Drafting Note: RRA of 1986 exempts a risk retention group from any state law regarding its operation in a state in which it is not domiciled except those laws referred to in RRA 1986. The state of domicile, however, retains under that section the full authority to regulate the formation and operation of the group.

However, if a risk retention group fails to qualify under the definitional requirement of RRA 1986, it will not benefit from this exemption from state law. The commissioner, therefore, would be authorized to apply any of the laws that may be preempted by RRA 1986 because the group will not qualify for the preemption.

A. Notice of Operations and Designation of Commissioner as Agent.

- (1) Before offering insurance in this state, a risk retention group shall submit to the commissioner on a form prescribed by the NAIC:
 - (a) A statement identifying the state or states in which the risk retention group is chartered and licensed as a liability insurance company, charter date, its principal place of business, and such other information, including information on its membership, as the commissioner of this state may require to verify that the risk retention group is qualified under Section 2K of this Act;

Drafting Note: The commissioner may need to take appropriate action in order to preserve the confidentiality of any proprietary or other confidential information, such as lists identifying the specific members of the group and their location.

- (b) A copy of its plan of operations or feasibility study and revisions of such plan or study submitted to the state in which the risk retention group is chartered and licensed; provided, however, that the provision relating to the submission of a plan of operation or feasibility study shall not apply with respect to any line or classification of liability insurance which:
 - (i) Was defined in the Product Liability Risk Retention Act of 1981 before October 27, 1986; and
 - (ii) Was offered before that date by any risk retention group which had been chartered and operating for not less than three (3) years before that date; and
 - (2) The risk retention group shall submit a copy of any revision to its plan of operation or feasibility study required by Section 3B of this Act at the same time that the revision is submitted to the commissioner of its chartering state.

Drafting Note: The plan of operations or feasibility study required under this provision is that submitted to and accepted by the chartering state.

- (3) The risk retention group shall submit a statement of registration, for which a filing fee shall be determined by the commissioner, which designates the commissioner as its agent for the purpose of receiving service of legal documents or process.
- B. Financial Condition. Any risk retention group doing business in this state shall submit to the commissioner:
- (1) A copy of the group's financial statement submitted to the state in which the risk retention group is chartered and licensed 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);
 - (2) A copy of each examination of the risk retention group as certified by the commissioner or public official conducting the examination;
 - (3) Upon request by the commissioner, a copy of any information or document pertaining to any outside audit performed with respect to the risk retention group; and
 - (4) Such information as may be required to verify its continuing qualification as a risk retention group under Section 2K.

Drafting Note: RRA 1986 also added the opportunity for a state to require that a risk retention group submit a notice of operations and financial condition. The purpose of this provision is to require a risk retention group to give the commissioner of any state in which it intends to operate adequate notice of its intended activity and financial condition so that the commissioner can take appropriate action if the possibility of a potential insolvency or commercial abuse exists.

C. Taxation.

- (1) Each risk retention group shall be liable for the payment of premium taxes and taxes on premiums of direct business for risks resident or located within this state, and shall report to the commissioner the net premiums written for risks resident or located within this state. The risk retention group shall be subject to taxation, and any applicable fines and penalties related thereto, on the same basis as a foreign admitted insurer.
- (2) To the extent licensed agents or brokers are utilized pursuant to Section 12 of this Act, they shall report to the commissioner the premiums for direct business for risks resident or located within this state which the licensees have placed with or on behalf of a risk retention group not chartered in this state.
- (3) To the extent that insurance agents or brokers are utilized pursuant to Section 12 of this Act, each agent or broker shall keep a complete and separate record of all policies procured from each risk retention group, which record shall be open to examination by the commissioner, as provided in [insert appropriate reference to Insurance Law]. These records shall, for each policy and each kind of insurance provided thereunder, include the following:
 - (a) The limit of liability;
 - (b) The time period covered;
 - (c) The effective date;

Model Risk Retention Act

- (d) The name of the risk retention group which issued the policy;
- (e) The gross premium charged; and
- (f) The amount of return premiums, if any.

Drafting Note: RRA 1986 does not specify which premium tax rate will be applied. The NAIC has recommended applying the rate for foreign admitted insurers; some states, however, may apply the surplus lines rate.

- D. **Compliance with Unfair Claims Settlement Practices Law.** Any risk retention group, its agents and representatives shall comply with the Unfair Claims Settlement Practices Act of this state, [insert section of the Insurance Code].

Drafting Note: The provisions regarding the liability of risk retention groups to state taxation, compliance with the unfair claims settlement practices law, and registration and designation of the commissioner as agent for purpose of service of process were included in the Product Liability RRA 1981 and continued in RRA 1986.

- E. **Deceptive, False, or Fraudulent Practices.** Any risk retention group shall comply with the laws of this state, [insert sections of the Insurance Code], 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.

Drafting Note: The provision regarding compliance with state laws regarding deceptive, false or fraudulent practices was added by RRA 1986. The chartering state retains all of its authority to deal with an unfair trade practice under all its laws generally, including its insurance law. However, the 1986 Act preempts those portions of non-chartering states' Unfair Trade Practices Acts contained in their insurance laws that relate to methods of competition and acts or practices that are unfair, if such methods, acts or practices are not also deceptive. Nonetheless, state antitrust and state unfair practice laws which apply to commerce generally are applicable and are not preempted by the federal law.

- F. **Examination Regarding Financial Condition.** Any risk retention group must submit to an examination by the commissioner to determine its financial condition if the commissioner of the jurisdiction in which the group is chartered and licensed has not initiated an examination or does not initiate an examination within sixty (60) 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 NAIC's Examiner Handbook.

Drafting Note: A provision regarding submission to examination by the nondomiciliary state was included in the Product Liability RRA 1981. However, it was modified to eliminate the requirement that the commissioner had "reason to believe" the risk retention group was in a financially impaired condition. This deletion gives the commissioner greater latitude in requiring the group to submit to an examination.

- G. **Notice to Purchasers.** Every application form for insurance from a risk retention group, and every policy (on its front and declaration pages) issued by a risk retention group, shall contain in ten (10) point type 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.

Drafting Note: A provision regarding the notice to purchasers concerning the limitation of regulatory oversight of risk retention groups and the lack of insolvency guaranty fund protection was added by RRA 1986. The purpose is to allow the states to require minimal disclosure to consumers.

- H. **Prohibited Acts Regarding Solicitation or Sale.** The following acts by a risk retention group are hereby prohibited:

- (1) The solicitation or sale of insurance by a risk retention group to any person who is not eligible for membership in such group; and
- (2) The solicitation or sale of insurance by, or operation of, a risk retention group that is in hazardous financial condition or financially impaired.

Drafting Note: The provision regarding the prohibition of solicitation or sale of insurance by the risk retention group to any person who is not eligible for membership or by a group that is in hazardous financial condition or financially impaired was included in RRA 1986 for the purpose of enhancing state regulatory authority. These provisions have not been included in state insurance codes due to the limitation on the coverages permissibly offered under the Product Liability RRA 1981. This provision is not intended to limit those acts against which a commissioner can take action but rather to expand those acts by identifying acts that would not have been violations of the law prior to the passage of RRA 1986.

- I. **Prohibition on Ownership by an Insurance Company.** No risk retention group shall be allowed to do business in this state if an insurance company is directly or indirectly a member or owner of such risk retention group, other than in the case of a risk retention group all of whose members are insurance companies.

Drafting Note: The prohibition on ownership by an insurance company of a risk retention group was added by RRA 1986 for the purpose of limiting the involvement of fully regulated insurance companies in risk retention groups. The states should also amend the appropriate licensing law applying to authorized insurers to include a similar prohibition. The Congress believed that this was a method to avoid the possibility that fully regulated companies would choose the Risk Retention Act as a vehicle to avoid full regulation.

- J. **Prohibited Coverage.** The terms of any insurance policy issued by any risk retention group shall not provide, or be construed to provide, coverage prohibited generally by statute of this state or declared unlawful by the highest court of this state whose law applies to such policy.

Drafting Note: The provision regarding prohibited coverages was added by RRA 1986 for the purpose of enabling a state to regulate the coverages that could be offered within its borders. The Congress believed that this was a matter of public policy to be determined by each state.

- K. **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 Section 4F of this Act.

- L. **Penalties.** A risk retention group that violates any provision of this Act will be subject to fines and penalties including revocation of its right to do business in this state, applicable to licensed insurers generally.

- M. **Operation Prior to Enactment of this Act.** In addition to complying with the requirements of this section, any risk retention group operating in this state prior to enactment of this Act shall, within thirty (30) days after the effective date of this Act, comply with the provision of Subsection A(1) of this section.

Drafting Note: A risk retention group which qualifies under the grandfather provision contained in Section 2K(3)(b) is exempt from Subsection M above, so long as it only offers product liability or completed operations coverage.

Section 5. Compulsory Associations

- A. No risk retention group shall be required or permitted to join or contribute financially to any insurance insolvency guaranty fund, or similar mechanism, in this state, nor shall any risk retention group, or its insureds or claimants against its insureds, receive any benefit from any such fund for claims arising under the insurance policies issued by a risk retention group.

- B. When a purchasing group obtains insurance covering its members' risks from an insurer not authorized in this state or a risk retention group, no such risks, wherever resident or located, shall be covered by any insurance guaranty fund or similar mechanism in this state.
- C. When a purchasing group obtains insurance covering its members' risks from an authorized insurer, only risks resident or located in this state shall be covered by the state guaranty fund subject to [insert appropriate reference to Insurance Law].
- D. (OPTIONAL) Notwithstanding [insert appropriate references to JUA provisions], the commissioner may require or exempt a risk retention group from participation in any mechanism established or authorized under the law of this state for the equitable apportionment among insurers of liability insurance losses and expenses incurred on policies written through such mechanism, and such risk retention group shall submit sufficient information to the commissioner to enable the commissioner to apportion on a nondiscriminatory basis the risk retention group's proportionate share of such losses and expenses.

Drafting Note: Product Liability RRA Section 3(a)(2) specifically exempts risk retention groups from participation in the state guaranty fund. Section 3(a)(1)(C) of RRA 1986 permits a state to require that a risk retention group participate in JUAs or similar mechanisms on a nondiscriminatory basis. In making such a determination, each state should take into account the different considerations which are applicable to JUAs and to assignments under assigned risk plans, respectively, as well as to the impact on the financial condition of risk retention groups.

Section 6. Countersignatures not Required

A policy of insurance issued to a risk retention group or any member of that group shall not be required to be countersigned as otherwise provided in Section [insert reference] of the Insurance Code.

Drafting Note: Product Liability RRA Section 3(a)(3) preempts the states from requiring policies to be countersigned by resident agent or brokers. This section is optional depending on states' existing countersignature laws.

Section 7. Purchasing Groups — Exemption from Certain Laws

A purchasing group and its insurer or insurers shall be subject to all applicable laws of this state, except that a purchasing group and its insurer or insurers shall be exempt, in regard to liability insurance for the purchasing group, from any law that would:

- A. Prohibit the establishment of a purchasing group;
- B. Make it unlawful for an insurer to provide or offer to provide insurance on a basis providing, 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;
- C. Prohibit a purchasing group or its members from purchasing insurance on a group basis described in Subsection B of this section;
- D. Prohibit a purchasing group from obtaining insurance on a group basis because the group has not been in existence for a minimum period of time or because any member has not belonged to the group for a minimum period of time;
- E. Require that a purchasing group must have a minimum number of members, common ownership or affiliation, or certain legal form;
- F. Require that a certain percentage of a purchasing group must obtain insurance on a group basis;

- G. Otherwise discriminate against a purchasing group or any of its members; or
- H. Require that any insurance policy issued to a purchasing group or any of its members be countersigned by an insurance agent or broker residing in this state.

Drafting Note: RRA 1986 establishes that the scope of the exemption from state law for risk retention groups is greater than that for purchasing groups. RRA 1986 in Section 3 states that a risk retention group is exempt from the laws of non-chartering states and then specifies those powers which are retained by those states. In regard to purchasing groups, however, Section 4 of RRA 1986 specifically lists those laws from which a purchasing group is exempt and which are in the nature of prohibiting or otherwise discriminating against purchasing groups. Therefore, a state can apply all other provisions of its laws to purchasing groups and persons dealing with purchasing groups. As noted in regard to risk retention groups, if a purchasing group does not meet any of the criteria specified to define it as a purchasing group, it does not benefit from any federal preemption of state law and all state laws apply.

Section 8. Notice and Registration Requirements of Purchasing Groups

- A. A purchasing group which intends to do business in this state shall, prior to doing business, furnish notice to the commissioner which shall, on forms prescribed by the NAIC:
 - (1) Identify the state in which the group is domiciled;
 - (2) Identify all other states in which the group intends to do business;
 - (3) Specify the lines and classifications of liability insurance which the purchasing group intends to purchase;
 - (4) Identify the insurance company or companies from which the group intends to purchase its insurance and the domicile of such company;
 - (5) Specify 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;
 - (6) Identify the principal place of business of the group; and
 - (7) Provide such other information as may be required by the commissioner to verify that the purchasing group is qualified under Section 2J of this Act.
- B. A purchasing group shall, within ten (10) days, notify the commissioner of any changes in any of the items set forth in Subsection A of this section.

Drafting Note: The notice provisions regarding purchasing groups are designed to require that purchasing groups provide adequate information to the commissioner so that an evaluation can be made as to whether a purchasing group is (a) bona fide and (b) is likely to operate in a manner and to purchase insurance coverage that is consistent with the laws of the state.

- C. The purchasing group shall register with and designate the commissioner (or other appropriate authority) as its agent solely for the purpose of receiving service of legal documents or process, for which a filing fee shall be determined by the commissioner, except that such requirements shall not apply in the case of a purchasing group which only purchases insurance that was authorized under the federal Products Liability Risk Retention Act of 1981, and:
 - (1) Which in any state of the United States

- (a) Was domiciled before April 1, 1986; and
 - (b) Is domiciled on and after October 27, 1986;
- (2) Which
- (a) Before October 27, 1986 purchased insurance from an insurance carrier licensed in any state; and
 - (b) Since October 27, 1986 purchased its insurance from an insurance carrier licensed in any state; or
- (3) Which was a purchasing group under the requirements of the Product Liability Risk Retention Act of 1981 before October 27, 1986.
- D. Each purchasing group that is required to give notice pursuant to Subsection A of this section shall also furnish such information as may be required by the commissioner to:
- (1) Verify that the entity qualifies as a purchasing group;
 - (2) Determine where the purchasing group is located; and
 - (3) Determine appropriate tax treatment.
- E. Any purchasing group which was doing business in this state prior to the enactment of this Act shall, within thirty (30) days after the effective date of this Act, furnish notice to the commissioner pursuant to the provisions of Subsection A of this section and furnish such information as may be required pursuant to Subsections B and C of this section.

Drafting Note: The provision regarding registering with and designating the commissioner as legal agent is designed to allow the commissioner to take prompt legal action against the purchasing group by facilitating proper legal service of process. The purchasing groups "grandfathered" out of this registration requirement are only those that were prior to April 1986, and continue to be, domiciled in one of the United States, that purchase insurance only from U.S. carriers, that qualified as a purchasing group under the Product Liability Risk Retention Act of 1981, and that do not currently purchase insurance other than that authorized under the Product Liability RRA 1981.

Section 9. Restrictions on Insurance Purchased by Purchasing Groups

- A. A purchasing group may not purchase insurance from a risk retention group that is not chartered in a state or from an insurer not admitted in the state in which the purchasing group is located, unless the purchase is effected through a licensed agent or broker acting pursuant to the surplus lines laws and regulations of such state.

Drafting Note: Although Section 4(f) of RRA was one of the most significant provisions dealing with regulation of insurance purchased by purchasing groups, the term "located" was not defined in the federal act.

- B. 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.

Drafting Note: This provision, with respect to non-admitted insurers, applies only if a state requires this notice to policyholders in the state with respect to other insurers not covered by insurance insolvency guaranty funds.

- C. No purchasing group may purchase insurance providing for a deductible or self-insured retention applicable to the group as a whole; however, coverage may provide for a deductible

or self-insured retention applicable to individual members.

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

Drafting Note: A state may prescribe limitations with respect to aggregate limits to all purchases of group insurance, as long as such limitations are not applied in a manner which discriminates against purchasing groups.

Section 10. Purchasing Group Taxation

Premium taxes and taxes on premiums paid for coverage of risks resident or located in this state by a purchasing group or any members of the purchasing groups shall be:

- A. Imposed at the same rate and subject to the same interest, fines and penalties as that applicable to premium taxes and taxes on premiums paid for similar coverage from a similar insurance source by other insureds; and
- B. Paid first by such insurance source, and if not by such source by the agent or broker for the purchasing group, and if not by such agent or broker then by the purchasing group, and if not by such purchasing group then by each of its members.

Drafting Note: The term "insurance source" refers to admitted, licensed and authorized carriers on the one hand and non-admitted, surplus line carriers on the others. The enacting states may wish to include applicable taxing provisions of its Code.

Section 11. Administrative and Procedural Authority Regarding Risk Retention Groups and Purchasing Groups

The commissioner is authorized to make use of any of the powers established under the Insurance Code of this state to enforce the laws of this state not specifically preempted by the Risk Retention Act of 1986 including the commissioner's administrative authority to investigate, issue subpoena, conduct depositions and hearings, issue orders, impose penalties and seek injunctive relief. With regard to any investigation, administrative proceedings or litigation, the commissioner can rely on the procedural laws of this state. The injunctive authority of the commissioner, in regard to risk retention groups, is restricted by the requirement that any injunction be issued by a court of competent jurisdiction.

Drafting Note: This provision regarding the administrative and procedural authority retained by the states under Sections 3(f) and 4(g) of RRA 1986 is designed to permit the commissioner to investigate for potential hazardous financial condition or market conduct abuses and to take appropriate action where necessary. It clarifies that no federal preemption takes place regarding the procedural and administrative authority of the commissioner.

However, RRA 1986 requires that any injunction sought by the commissioner must be obtained from a court of competent jurisdiction. See RRA 1986 Section 3(a)(1)(G), Section 3(e), and Section 3(f). However, this restriction on the injunctive authority of the commissioner does not carry over to any action that the commissioner may take under its state administrative procedural law regarding purchasing groups. Section 4 of RRA 1986, which addresses the limited preemption from state law provided to purchasing groups, does not refer to any restriction on the commissioner's injunctive authority. More specifically, the "savings clause" regarding state authority, RRA Section 4(g), makes no mention of such requirement.

Section 12. Duty of Agents or Brokers to Obtain License

- A. Risk retention groups.

- (1) No person, firm, association or corporation shall act or aid in any manner in soliciting, negotiating or procuring liability insurance in this state from a risk retention group unless such person, firm, association or corporation is licensed as an insurance agent or broker in accordance with Section [insert appropriate reference to Insurance Law].

B. Purchasing groups.

- (1) No person, firm, association or corporation shall act or aid in any manner in soliciting, negotiating or procuring liability insurance in this state for a purchasing group from an authorized insurer or a risk retention group chartered in a state unless such person, firm, association or corporation is licensed as an insurance agent or broker in accordance with Section [insert appropriate reference to Insurance Law].
- (2) No person, firm, association or corporation shall act or aid in any manner in soliciting, negotiating or procuring liability insurance coverage in this state for any member of a purchasing group under a purchasing group's policy unless such person, firm, association or corporation is licensed as an insurance agent or broker in accordance with Section [insert appropriate reference to Insurance Law].
- (3) No person, firm, association or corporation shall act or aid in any manner in soliciting, negotiating or procuring liability insurance from an insurer not authorized to do business in this state on behalf of a purchasing group located in this state unless such person, firm, association or corporation is licensed as a surplus lines agent or excess line broker in accordance with [insert appropriate reference to Insurance Law].

Drafting Note: The RRA (1986) does not preempt state law with respect to licensing and regulation of agents and brokers, with the exception of the elimination of the residence requirement and of countersignature laws, as provided in Subsection C of this section, and Sections 6 and 7H of this Act.

- C. For purposes of acting as an agent or broker for a risk retention group or purchasing group pursuant to Subsections A and B of this section, the requirement of residence in this state shall not apply.
- D. Every person, firm, association or corporation licensed pursuant to the provisions of [insert appropriate references to Insurance Law], on business placed with risk retention groups or written through a purchasing group, shall inform each prospective insured of the provisions of the notice required by Subsection G of Section 4 of this Act in the case of a risk retention group and Subsection C of Section 9 of this Act in the case of a purchasing group.

Section 13. Binding Effect of Orders Issued in U.S. District Court

An order issued by any 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 hazardous financial or financially impaired condition shall be enforceable in the courts of the state.

Section 14. Rules and Regulations

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

Section 15. Severability

If any clause, sentence, paragraph, section or part of this act or the application thereof to any person or circumstances, shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, such judgement shall not affect, impair or invalidate the remainder of this act, and the application thereof to other persons or circumstance, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgement shall have been rendered and to the person or circumstances involved.

Section 16. Effective Date

This Act will be effective on [insert date].

Legislative History (all references are to the Proceedings of the NAIC).

1983 Proc. I 6, 35, 789-790, 795, 799-805 (adopted).

1987 Proc. I 11, 20, 744, 857-865 (amended and reprinted).

1987 Proc. II 15, 24, 774-775, 776-788 (amended).

1991 Proc. II 25, 58, 976, 992-1003 (amended and reprinted).