

TITLE 41
INSURANCE

CHAPTER 48
RISK RETENTION GROUPS

41-4801. SHORT TITLE. This chapter may be cited as the "Idaho Liability Risk Retention Act."

[41-4801, added 1987, ch. 140, sec. 1, p. 274.]

41-4802. PURPOSE. The purpose of this chapter is to regulate the formation and operation of risk retention groups in Idaho formed pursuant to the provisions of the federal liability risk retention act of 1986.

[41-4802, added 1987, ch. 140, sec. 1, p. 275.]

41-4803. DEFINITIONS. As used in this chapter:

(1) "Director" means the director of the department of insurance of this state or the director, commissioner, or superintendent of the department of insurance of any other state.

(2) "Completed operations liability" means liability arising out of the installation, maintenance or repair of any product at a site which is not owned or controlled by:

(a) Any person who performs that work; or

(b) Any person who hires an independent contractor to perform that work, but shall include liability for activities which are completed or abandoned before the date of the occurrence giving rise to the liability.

(3) "Domicile" for purposes of determining the state in which a purchasing group is domiciled means:

(a) For a corporation, the state in which the purchasing groups is incorporated; or

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

(4) "Hazardous financial condition" means that, based on its present or reasonably anticipated financial condition, a risk retention group, although not yet financially impaired or insolvent, is unlikely to be able:

(a) To meet obligations to policyholders with respect to known claims and reasonably anticipated claims; or

(b) To pay other obligations in the normal course of business.

(5) "Insurance" means primary insurance, excess insurance, reinsurance, surplus lines insurance, or any other arrangement for shifting and distributing risk which is determined to be insurance under this code.

(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 such other persons resulting from or arising out of any business whether profit or nonprofit, trade, product, services including professional services, premises, or operations, or arising out of any activity of any state or local government, or any agency or political subdivision thereof, but does not include personal risk liability or with the exception of an employer's legal liability with respect to its employees under the federal employers' liability act (45 U.S.C. 51 et seq.), an employer's liability.

(7) "Personal risk liability" means liability for damages because of injury to any person, damage to property, or other loss or damage resulting from any person, familial, or household responsibilities or activities apart from responsibilities or activities referred to in subsection (6) of this section.

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

(a) The coverages, deductibles, coverage limits and rates and rating classifications systems for each line of insurance the group would offer;

(b) Historical and expected loss experience of the proposed members and national experience of similar exposures to the extent that this experience is reasonably available;

(c) Pro forma financial statements and projections;

(d) Appropriate opinions by a qualified, independent casualty actuary, including a determination of minimum premium or participation levels required to commence operations and to prevent hazardous financial conditions;

(e) Identification of management, underwriting procedures and guidelines, managerial oversight methods, and investment policies; and

(f) Such other items as may be required by the director for liability insurance companies authorized by the insurance laws of the state in which the risk retention group is chartered.

(9) "Product liability" means liability for damages because of any personal injury, death, emotional harm, consequential economic damage or property damage (including damages resulting from the loss of use of property) arising out of the manufacture, design, importation, distribution, packaging, labeling, lease, or sale of a product, but does not include the liability of any person for those damages if the product involved was in the possession of such a person when the incident giving rise to the claim occurred.

(10) "Purchasing group" means any group which:

(a) Has as one of its purposes the purchase of liability insurance on a group basis;

(b) Purchases such insurance only for its group members and only to cover their similar or related liability exposure, as described in paragraph (c) of this subsection;

(c) 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

(d) Is domiciled in any state.

(11) "Risk retention group" means any corporation or other limited liability association:

(a) Whose primary activity consists of assuming and spreading all, or any portion of the liability exposure of its group members;

(b) Which is organized for the primary purpose of conducting the activity described under paragraph (a) of this subsection which:

(i) 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

(ii) 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 director of at least one (1) 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 such business continuously since such date and only for the purpose of continuing to provide insurance to cover product liability or completed operations liability, as such terms were defined in the federal product liability risk retention act of 1981 before the date of the enactment of the federal liability risk retention act of 1986;

(c) 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 which:

(i) Has as its members only persons who have an ownership interest in the group and which has as its owners only persons who are members who are provided insurance by the risk retention group; or

(ii) Has as its sole member and sole owner an organization which is owned by persons who are provided insurance by the risk retention group;

(d) 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; or

(e) Whose activities do not include the provision of insurance other than:

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

(ii) 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 such group or member meets the requirement described in paragraph (d) of this subsection from membership in the risk retention group which provides such reinsurance;

(f) The name of which includes the phrase "risk retention group".

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

[41-4803, added 1987, ch. 140, sec. 1, p. 275.]

41-4804. RISK RETENTION GROUPS CHARTERED IN THIS STATE. (1) A risk retention group seeking to be chartered in this state must be chartered and licensed as a liability insurance company authorized by the insurance laws of this state and, except as provided elsewhere in this chapter, must comply with:

(a) All of the laws, rules, regulations and requirements applicable to such insurers chartered and licensed in this state;

(b) Section [41-4805](#), Idaho Code, to the extent such requirements are not a limitation on laws, rules, regulations or requirements of this state.

(2) Before it may offer insurance in any state, each risk retention group shall also submit for approval to the director of this state a plan of operation or feasibility study and revisions of such plan or study if the group intends to offer any additional lines of liability insurance.

Immediately upon receipt of an application for charter, this state shall provide:

- (a) Summary information concerning the filing to the national association of insurance commissioners, including the name of the risk retention group, 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;
- (b) The amount and nature of initial capitalization;
- (c) The coverages to be afforded; and
- (d) The states in which the group intends to operate.

Providing notification to the national association of insurance commissioners is in addition to and shall not be sufficient to satisfy the requirements of section [41-4805](#), Idaho Code, or any other sections of this chapter.

[41-4804, added 1987, ch. 140, sec. 1, p. 277.]

41-4805. RISK RETENTION GROUPS NOT CHARTERED IN THIS STATE. Risk retention groups chartered in states other than this state and seeking to do business as a risk retention group in this state must observe and abide by the laws of this state as follows:

(1) Before transacting any insurance business or offering any insurance policies in this state, a risk retention group shall submit to the director of this state:

- (a) A statement identifying the state or states in which the risk retention group is chartered and licensed as a liability insurance company, the date of chartering, the risk retention group's principal place of business, and such other information including information concerning its membership as the director of this state may require to verify that the risk retention group is qualified as defined in subsection (11) of section [41-4803](#), Idaho Code;
- (b) A copy of its plan of operations or feasibility study and revisions of such plan or study submitted to its state of domicile; provided, however, that the provision relating to the submission of a plan of operation or feasibility study shall not apply with respect to any 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 such date by any risk retention group which had been chartered and operating for not less than three (3) years before such date;
- (c) A statement of registration which designates the director as its agent for the purpose of receiving service of legal documents or process against the risk retention group.

(2) Any risk retention group doing business in this state shall submit the following financial information to the director:

- (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 operating 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 director or public official conducting the examination;

(c) Upon request by the director, a copy of any audit performed with respect to the risk retention group; and

(d) Such information as may be required to verify the group's continuing qualification as a risk retention group as defined in subsection (11) of section [41-4803](#), Idaho Code.

(3) All risk retention groups operating in this state, and all premiums paid for any coverage within this state to any risk retention group, shall be subject to the same premium tax provisions, including any interest, fines, and penalties for nonpayment, as are applicable to foreign admitted insurers. To the extent any agents or brokers are utilized, they shall report and pay the taxes for the premiums for risks which they have placed with or on behalf of any risk retention group not chartered in this state. To the extent any agents or brokers are not utilized, or agents or brokers that are utilized fail to pay said premium tax, each risk retention group shall pay the tax for risks insured within the state. Further, each risk retention group shall report to the director all premiums paid to it for risks insured within this state.

(4) Any risk retention groups and its agents and representatives are subject to and shall comply with the provisions of section [41-1329](#), Idaho Code (unfair claim settlement practices).

(5) Any risk retention group formed in this state shall comply with and be subject to [chapter 13, title 41](#), Idaho Code (trade practices and frauds). The director may issue orders enjoining prohibited practices in accordance with section [41-213](#), Idaho Code, or section [41-1321](#), Idaho Code, or may apply directly to the district court for Ada county, state of Idaho, for such injunctive relief as he deems appropriate.

(6) Any risk retention group must submit to an examination by the director of this state to allow him to determine the group's financial condition if the director of the jurisdiction in which the group is chartered has not initiated an examination or does not initiate an examination within sixty (60) days after a request by the director of this state. Any such examination shall be coordinated to avoid unjustified repetition or duplication and shall be conducted in an expeditious manner.

(7) Any policy issued by a risk retention group shall contain in 10 point or larger type on the front page and the declaration page, the following notice:

NOTICE

This policy has been 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) In addition to other restrictions that may be applicable, the following acts by a risk retention group are hereby prohibited:

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

(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) 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 whose members are all insurance companies.

(10) No risk retention group may offer any insurance policy or insurance coverage that has been declared unlawful by the Idaho supreme court or is in conflict with chapter 5 or [chapter 25, title 41](#), Idaho Code.

(11) A risk retention group not chartered in this state and doing business in this state must comply with a lawful order issued in a voluntary dissolution proceeding or in a delinquency proceeding commenced by another state's insurance director if there has been a finding of financial impairment after an examination pursuant to subsection (6) of this section.

[41-4805, added 1987, ch. 140, sec. 1, p. 278; am. 2005, ch. 78, sec. 5, p. 273.]

41-4806. COMPULSORY ASSOCIATIONS. No risk retention group shall be permitted to join or contribute financially to any insurance insolvency guaranty fund or similar mechanism in this state, nor shall any risk retention group, or its insureds, receive any benefit from any such fund for claims arising out of the operations of such risk retention group.

[41-4806, added 1987, ch. 140, sec. 1, p. 280.]

41-4807. COUNTER SIGNATURES 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 sections [41-337](#) and [41-338](#), Idaho Code.

[41-4807, added 1987, ch. 140, sec. 1, p. 280; am. 2005, ch. 75, sec. 3, p. 255.]

41-4808. PURCHASING GROUPS -- EXEMPTION FROM CERTAIN LAWS RELATING TO THE GROUP PURCHASE OF INSURANCE. Any purchasing group meeting the criteria established under the provisions of the federal liability risk retention act of 1986 shall be exempt from any law of this state relating to the creation of groups for the purchase of insurance, prohibition of group purchasing, or any law that would discriminate against a purchasing group or its members. In addition, an insurer shall be exempt from any law of this state which prohibits 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 shall be subject to all other applicable laws of this state.

[41-4808, added 1987, ch. 140, sec. 1, p. 280.]

41-4809. NOTICE AND REGISTRATION REQUIREMENTS OF PURCHASING GROUPS. (1) A purchasing group which intends to do business in this state shall furnish notice to the director which shall:

- (a) Identify the state in which the group is domiciled;
- (b) Specify the lines and classifications of liability insurance which the purchasing group intends to purchase;
- (c) Identify the insurance company from which the group intends to purchase its insurance and the domicile of such company;
- (d) Identify the principal place of business of the group; and
- (e) Provide such other information as may be required by the director to verify that the purchasing group is qualified as defined in subsection (10) of section [41-4803](#), Idaho Code.

(2) The purchasing group shall register with and designate the director as its agent for the purpose of receiving service of legal documents or process, except that such requirements shall not apply in the case of a purchasing group:

- (a) Which was domiciled before April 1, 1986, and is domiciled on and after October 27, 1986, in any state of the United States;
- (b) Which before October 27, 1986, purchased insurance from an insurance carrier licensed in any state and since October 27, 1986, purchased its insurance from an insurance carrier licensed in any state;
- (c) Which was a purchasing group under the requirements of the product liability risk retention act of 1981 before October 27, 1986; and
- (d) Which does not purchase insurance that was not authorized for purposes of an exemption under that act, as in effect before October 27, 1986.

[41-4809, added 1987, ch. 140, sec. 1, p. 280.]

41-4810. RESTRICTIONS ON INSURANCE PURCHASED BY PURCHASING GROUPS. A purchasing group may not purchase insurance from a risk retention group that is not chartered in a state, nor 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.

[41-4810, added 1987, ch. 140, sec. 1, p. 281.]

41-4811. ADMINISTRATIVE AND PROCEDURAL AUTHORITY REGARDING RISK RETENTION GROUPS AND PURCHASING GROUPS. The director is authorized to make use of any of the powers established under this code to enforce the laws of this state so long as those powers are not specifically preempted by the product liability risk retention act of 1981, as amended by the risk retention amendments of 1986. This includes, but is not limited to, the director's administrative authority to investigate, issue subpoenas, conduct depositions and hearings, issue orders and impose penalties. With regard to any investigation, administrative proceedings, or litigation, the director may rely on the procedural law and regulations of the state. The injunctive authority of the director in regard to risk retention groups is restricted by the requirement that any injunction be issued by a court of competent jurisdiction.

[41-4811, added 1987, ch. 140, sec. 1, p. 281.]

41-4812. PENALTIES. A risk retention group which violates any provision of this chapter will be subject to fines and penalties applicable to licensed insurers generally, including revocation of its license and/or the right to do business in this state.

[41-4812, added 1987, ch. 140, sec. 1, p. 281.]

41-4813. DUTY OF AGENTS OR BROKERS TO OBTAIN LICENSE. Any person acting, or offering to act, as an agent or broker for a risk retention group or purchasing group, which solicits members, sells insurance coverage, purchases coverage for its members located within the state or otherwise does business in this state shall, before commencing any such activity, obtain a license from the director.

[41-4813, added 1987, ch. 140, sec. 1, p. 281.]

41-4814. BINDING EFFECT OF ORDERS ISSUED IN U.S. DISTRICT COURTS. 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 a hazardous financial condition shall be enforceable in the courts of the state.

[41-4814, added 1987, ch. 140, sec. 1, p. 282.]

41-4815. RULES AND REGULATIONS. The director 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 this chapter.

[41-4815, added 1987, ch. 140, sec. 1, p. 282.]

41-4816. 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 group shall be:

(1) 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

(2) 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.

[41-4816, added 1990, ch. 348, sec. 1, p. 937.]