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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

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INTRODUCED BY YANDRISEVITS, BILLOW, MICHLOVIC, MELIO, PESCI,  
BORTNER, COY, PRESSMANN, COLAIZZO, TRELLO AND PRESTON,  
OCTOBER 23, 1989

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REFERRED TO COMMITTEE ON INSURANCE, OCTOBER 23, 1989

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AN ACT

1 Implementing the Federal Liability Risk Retention Act of 1986;  
2 providing for regulation by the Insurance Department of risk  
3 retention groups and risk purchasing groups doing business in  
4 this Commonwealth; and further providing for the taxation of  
5 risk retention groups and risk purchasing groups.

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17 The General Assembly of the Commonwealth of Pennsylvania  
18 hereby enacts as follows:

19 Section 1. Short title.

20 This act shall be known and may be cited as the Pennsylvania  
21 Risk Retention Act.

22 Section 2. Statement of purpose.

23 The purpose of this act is to regulate the formation and  
24 operation of risk retention groups and risk purchasing groups in  
25 this Commonwealth formed pursuant to the provisions of the  
26 Liability Risk Retention Act of 1986 (Public Law 99-563, 15  
27 U.S.C. § 3901 et seq.) to the extent permitted by such law.

28 Section 3. Definitions.

29 The following words and phrases when used in this act shall  
30 have the meanings given to them in this section unless the

1 context clearly indicates otherwise:

2 "Admitted insurer." An insurer with a valid certificate of  
3 authority to do insurance business in this Commonwealth.

4 "Commissioner." The Insurance Commissioner of the  
5 Commonwealth.

6 "Completed operations liability." Liability arising out of  
7 the installation, maintenance or repair of any product at a site  
8 which is not owned or controlled by:

9 (1) any person who performs that work; or

10 (2) any person who hires an independent contractor to  
11 perform that work;

12 but shall include liability for activities which are completed  
13 or abandoned before the date of the occurrence giving rise to  
14 the liability.

15 "Doing business." The acts which constitute the doing of  
16 insurance business in this Commonwealth as set forth in section  
17 208(b) of the act of May 17, 1921 (P.L.789, No.285), known as  
18 The Insurance Department Act of one thousand nine hundred and  
19 twenty-one, except that risk retention groups and risk  
20 purchasing groups are not doing business when responding to a  
21 request for coverage received directly from a Pennsylvania  
22 resident and not as a result of solicitation.

23 "Domicile." For purposes of determining the state in which a  
24 purchasing group is domiciled, the term means:

25 (1) For a corporation, the state in which the purchasing  
26 group is incorporated.

27 (2) For an unincorporated entity, the state of its  
28 principal place of business.

29 "Eligible surplus lines insurer." A non-admitted insurer  
30 doing business in this Commonwealth in conformance with section

1 7 of the act of January 24, 1966 (1965 P.L.1509, No.531),  
2 referred to as the Surplus Lines Insurance Law.

3 "Hazardous financial condition." A condition in which, based  
4 on its present or reasonably anticipated financial condition, a  
5 risk retention group, although not yet financially impaired or  
6 insolvent, is unlikely to be able:

7 (1) to meet obligations to policyholders with respect to  
8 known claims and reasonably anticipated claims; or

9 (2) to pay other obligations in the normal course of  
10 business.

11 "Insurance." Primary insurance, excess insurance,  
12 reinsurance, surplus lines insurance and any other arrangement  
13 for shifting and distributing risk which is determined to be  
14 insurance under the laws of this Commonwealth.

15 "Liability."

16 (1) The term means legal liability for damages  
17 (including costs of defense, legal costs and fees, and other  
18 claims expenses) because of injuries to other persons, damage  
19 to their property, or other damage or loss to such other  
20 persons resulting from or arising out of:

21 (i) any business (whether profit or nonprofit),  
22 trade, product, services (including professional  
23 services), premises or operations; or

24 (ii) any activity of any state or local government,  
25 or any agency or political subdivision thereof.

26 (2) The term does not include personal risk liability  
27 and an employer's liability with respect to its employees  
28 other than legal liability under the Employers' Liability Act  
29 (45 U.S.C. § 51 et seq.).

30 "Located." A purchasing group that is doing business in this

1 Commonwealth.

2 "Non-admitted insurer." An insurer that does not have a  
3 certificate of authority to do insurance business in this  
4 Commonwealth. The term includes insurance exchanges authorized  
5 under laws of various states.

6 "Personal risk liability." 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  
9 responsibilities or activities, rather than from  
10 responsibilities or activities referred to in the definition of  
11 "liability."

12 "Plan of operation or a feasibility study." An analysis  
13 which presents the expected activities and results of a risk  
14 retention group, including, at a minimum, all of the following:

15 (1) Information sufficient to verify that its members  
16 are engaged in businesses or activities similar or related  
17 with respect to the liability to which such members are  
18 exposed by virtue of any related, similar or common business,  
19 trade, product, services, premises or operations.

20 (2) For each state in which it intends to operate, the  
21 coverages, deductibles, coverage limits, rates and rating  
22 classification systems for each kind of liability insurance  
23 the group intends to offer.

24 (3) Historical and expected loss experience of the  
25 proposed members and national experience of similar exposures  
26 to the extent that this experience is reasonably available.

27 (4) Pro forma financial statements and projections.

28 (5) Appropriate opinions by a qualified, independent  
29 casualty actuary, including a determination of minimum  
30 premium or participation levels required to commence

1 operations and to prevent a hazardous financial condition.

2 (6) Identification of management, underwriting and  
3 claims procedures, marketing methods, managerial oversight  
4 methods, investment policies and reinsurance agreements.

5 (7) The states in which the risk retention group intends  
6 to operate or is currently operating.

7 (8) Such other matters as may be prescribed by the  
8 commissioner for liability insurance companies authorized by  
9 the insurance laws of the state in which the risk retention  
10 group is chartered.

11 "Product liability." Liability for damages because of any  
12 personal injury, death, emotional harm, consequential economic  
13 damage or property damage (including damages resulting from the  
14 loss of use of property) arising out of the manufacture, design,  
15 importation, distribution, packaging, labeling, lease or sale of  
16 a product. The term does not include the liability of any person  
17 for these damages if the product involved was in the possession  
18 of such a person when the incident giving rise to the claim  
19 occurred.

20 "Purchasing group." Any group which:

21 (1) has as one of its purposes the purchase of liability  
22 insurance on a group basis;

23 (2) purchases such insurance only for its group members  
24 and only to cover their similar or related liability  
25 exposure, as described in paragraph (3);

26 (3) is composed of members whose businesses or  
27 activities are similar or related with respect to the  
28 liability to which members are exposed by virtue of any  
29 related, similar or common business, trade, product,  
30 services, premises or operations; and

1           (4) is domiciled in any state.

2           "Risk retention group." Any corporation or other limited  
3 liability association:

4           (1) whose primary activity consists of assuming and  
5 spreading all, or any portion, of the liability exposure of  
6 its group members;

7           (2) which is organized for the primary purpose of  
8 conducting the activity described under paragraph (1);

9           (3) which:

10           (i) is chartered and licensed as an insurance  
11 company to write liability insurance and authorized to  
12 engage in the business of insurance under the laws of any  
13 state; or

14           (ii) before January 1, 1985, was chartered or  
15 licensed and authorized to engage in the business of  
16 insurance under the laws of Bermuda or the Cayman Islands  
17 and, before such date, had certified to the insurance  
18 commissioner of at least one state that it satisfied the  
19 capitalization requirements of such state, except that  
20 any such group shall be considered to be a risk retention  
21 group only if it has been engaged in business  
22 continuously since such date and only for the purpose of  
23 continuing to provide insurance to cover product  
24 liability or completed operations liability, as such  
25 terms were defined in the Product Liability Risk  
26 Retention Act of 1981 (Public Law 97-45, 95 Stat. 949),  
27 before the date of the enactment of the Liability Risk  
28 Retention Act of 1986 (Public Law 99-563, 15 U.S.C. §  
29 3901 et seq.);

30           (4) which does not exclude any person from membership in

1 the group solely to provide for members of such a group a  
2 competitive advantage over such a person;

3 (5) which:

4 (i) has as its owners only persons who comprise the  
5 membership of the risk retention group and who are  
6 provided insurance by such group; or

7 (ii) has as its sole owner an organization which has  
8 as its members only persons who comprise the membership  
9 of the risk retention group and which organization has as  
10 its owners only persons who comprise the membership of  
11 the risk retention group and who are provided insurance  
12 by the risk retention group.

13 (6) whose members are engaged in businesses or  
14 activities similar or related with respect to the liability  
15 of which such members are exposed by virtue of any related,  
16 similar or common business trade, product, services, premises  
17 or operations; and

18 (7) whose activities do not include the provision of  
19 insurance other than:

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

23 (ii) reinsurance with respect to the liability of  
24 any other risk retention group (or any members of such  
25 other risk retention group) which is engaged in  
26 businesses or activities so that the group or member  
27 meets the requirement described in paragraph (6) from  
28 membership in the risk retention group which provides  
29 such reinsurance; and

30 (8) the name of which includes the phrase "Risk



Retention Group."

"State." Any state of the United States or the District of Columbia.

Section 4. Risk retention groups chartered in this Commonwealth.

(a) General rule.--A domestic risk retention group shall, pursuant to the provisions of the act of May 17, 1921 (P.L.682, No.284), known as The Insurance Company Law of 1921, and the act of May 17, 1921 (P.L.789, No.285), known as The Insurance Department Act of one thousand nine hundred and twenty-one, be chartered and licensed as a domestic fire or casualty insurance company to write only liability insurance pursuant to this act and, except as provided elsewhere in this act, shall comply with all the laws, rules, regulations and requirements applicable to such insurers chartered and licensed in this Commonwealth and with section 5 to the extent that such requirements are not a limitation of laws, rules, regulations or requirements of this Commonwealth.

(b) Plan of operation or feasibility study.--Before it may offer insurance in any state, each domestic risk retention group shall also submit for approval to the commissioner a plan of operation or a feasibility study. In the event of any subsequent material change in any item of the plan of operation or feasibility study, the risk retention group shall submit an appropriate revision within ten days of any such change. The group shall not offer any additional kinds of liability insurance in this Commonwealth or in any other state until a revision of such plan or study is approved by the commissioner.

(c) Exception to plan or study requirement.--The provisions of subsection (b), relating to the submission of a plan of

operation or feasibility study, shall not apply with respect to any kind or classification of liability insurance which:

(1) was defined in the Product Liability Risk Retention Act of 1981 (Public Law 97-45, 95 Stat. 949), before October 27, 1986; and

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

(d) Information in application.--At the time of filing its application for charter, the risk retention group shall provide to the commissioner in summary form the following information:

(1) The identity of the initial members of the group.

(2) 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.

(3) The amount and nature of initial capitalization.

(4) The coverages to be afforded.

(5) The states in which the group intends to operate.

Section 5. Risk retention groups not chartered in this Commonwealth.

(a) General rule.--A risk retention group chartered and licensed in a state other than this Commonwealth and seeking to do business as a risk retention group in this Commonwealth shall comply with the laws of this Commonwealth, as provided in this section.

(b) Notice of operations and designation of commissioner as agent.--Before offering insurance in this Commonwealth, a risk retention group shall submit to the commissioner all of the following:

(1) A statement identifying the state or states in which

1 the risk retention group is chartered and licensed as an  
2 insurance company to write liability insurance, the charter  
3 date, its principal place of business and such other  
4 information, including information on its membership, as the  
5 commissioner may require to verify that the risk retention  
6 group is qualified under the definition of "risk retention  
7 group" in section 3.

8 (2) A copy of its plan of operations or a feasibility  
9 study and copies of all revisions of such plan or study  
10 submitted to the state in which the risk retention group is  
11 chartered and licensed, provided that the provision relating  
12 to the submission of a plan of operation or a feasibility  
13 study shall not apply with respect to any kind or  
14 classification of liability insurance which:

15 (i) was defined in the Product Liability Risk  
16 Retention Act of 1981 (Public Law 97-45, 95 Stat. 949 et  
17 seq.) before October 27, 1986; and

18 (ii) was offered before such date by any risk  
19 retention group which had been chartered and was  
20 operating for not less than three years before such date.

21 (3) A copy of the most recent annual statement as  
22 described in subsection (d)(1).

23 (4) A statement of registration for which a filing fee  
24 shall be imposed, which statement appoints the commissioner  
25 as its agent for the purpose of receiving service of legal  
26 documents or process.

27 (i) The appointment of the commissioner shall be  
28 accompanied by written designation of the name and  
29 address of the officer, agent or other person to whom  
30 such process shall be forwarded by the commissioner or

1 his deputy on behalf of such risk retention group. In the  
2 event such designation is changed, a new certificate of  
3 designation shall be filed with the commissioner within  
4 ten days of such change.

5 (ii) Service of process upon a risk retention group  
6 pursuant to this paragraph shall be made by serving the  
7 commissioner, or any deputy commissioner or any salaried  
8 employee of the department whom the commissioner  
9 designates for such purpose, with two copies thereof and  
10 the payment of a fee to be published by notice in the  
11 Pennsylvania Bulletin. The commissioner shall forward a  
12 copy of such process by registered or certified mail to  
13 the risk retention group at the address given in its  
14 written certificate of designation and shall keep a  
15 record of all process so served upon him. Service of  
16 process so made shall be deemed made within the  
17 territorial jurisdiction of any court in this  
18 Commonwealth.

19 (c) Revision of plan or study.--The risk retention group  
20 shall submit a copy of any revision to its plan of operation or  
21 feasibility study required by section 4(b) at the same time that  
22 such revision is submitted to the commissioner of its chartering  
23 state.

24 (d) Financial condition.--Any risk retention group doing  
25 business in this Commonwealth shall submit annually to the  
26 commissioner, on or before March 1, all of the following:

27 (1) A copy of the group's financial statement submitted  
28 to the state in which the risk retention group is chartered  
29 and licensed, which shall be certified by an independent  
30 public accountant and shall contain a statement of opinion on

1 loss and loss adjustment expense reserves made by a member of  
2 the American Academy of Actuaries or a qualified loss reserve  
3 specialist.

4 (2) A copy of the most recent examination of the risk  
5 retention group as certified by the commissioner or public  
6 official conducting the examination.

7 (3) Upon request by the commissioner, a copy of any  
8 information or document pertaining to any outside audit  
9 performed with respect to the risk retention group.

10 (4) Such information as may be required to verify its  
11 continuing qualification as a risk retention group, as  
12 defined in section 3.

13 (e) Notice of order of financial impairment.--If a risk  
14 retention group is found to be in a hazardous financial  
15 condition by any court of competent jurisdiction, the risk  
16 retention group shall submit a copy of the court order to the  
17 commissioner within ten days of the date of the order.

18 (f) Penalties.--A risk retention group shall be liable for a  
19 fine of \$100 per day of delinquency for either of the following:

20 (1) Failure to file the annual statement as provided by  
21 law on the first day of March, except that, for good cause  
22 shown, the commissioner may grant, after written request, a  
23 reasonable extension of time within which such statement may  
24 be filed.

25 (2) Failure to submit to the commissioner a copy of the  
26 order of a court of competent jurisdiction finding the risk  
27 retention group to be in a hazardous financial condition or  
28 financially impaired within ten days of the date of such  
29 order.

30 (g) Taxation of risk retention groups.--

1           (1) Each risk retention group shall be liable for the  
2     payment of premium taxes and taxes on premiums of direct  
3     business for risks resident or located within this  
4     Commonwealth and shall report to the commissioner the gross  
5     direct premiums, less returns thereon, written for risks  
6     resident or located within this Commonwealth. Such risk  
7     retention group shall be subject to taxation and any  
8     applicable fines and penalties related thereto on the same  
9     basis as a foreign admitted insurer, pursuant to section 902  
10    of the act of March 4, 1971 (P.L.6, No.2), known as the Tax  
11    Reform Code of 1971.

12          (2) To the extent that licensed agents, brokers or  
13    surplus lines agents with Pennsylvania licenses are utilized  
14    pursuant to section 6, they shall report to the commissioner  
15    the premiums for direct business for risks resident or  
16    located within this Commonwealth which such licensees have  
17    placed with or on behalf of a risk retention group not  
18    chartered and licensed in this Commonwealth.

19    (h) Compliance with Unfair Insurance Practices Act.--Any  
20    risk retention group and its agents and representatives shall  
21    comply with the act of July 22, 1974 (P.L.589, No.205), known as  
22    the Unfair Insurance Practices Act, insofar as its provisions  
23    apply to unfair claims practices and deceptive, false or  
24    fraudulent practices. However, if the commissioner seeks an  
25    injunction regarding such conduct, the injunction must be  
26    obtained from a court of competent jurisdiction.

27    (i) Examination regarding financial condition.--Any risk  
28    retention group shall submit to an examination by the Insurance  
29    Commissioner of the Commonwealth to determine its financial  
30    condition if the commissioner of the jurisdiction in which the

1 group is chartered and licensed has not initiated an examination  
2 or does not initiate an examination within 60 days after a  
3 request by the Insurance Commissioner of the Commonwealth. Any  
4 such examination shall be coordinated with other jurisdictions  
5 to the extent feasible in order to avoid unjustified repetition  
6 and shall be conducted in an expeditious manner and in  
7 accordance with the National Association of Insurance  
8 Commissioners' Examination Handbook.

9 (j) Prohibited coverage.--The terms of any insurance policy  
10 issued by such risk retention group shall not provide or be  
11 construed to provide insurance policy coverage prohibited  
12 generally by state statute or declared unlawful by the highest  
13 court of the state whose law applies to such policy.

14 (k) Delinquency proceedings.--A risk retention group doing  
15 business in this Commonwealth shall comply with a lawful order  
16 issued in a voluntary dissolution proceeding or in a delinquency  
17 proceeding commenced by a state insurance commissioner if there  
18 has been a finding of hazardous financial condition or financial  
19 impairment after an examination under subsection (i).

20 (l) Operation prior to enactment of this act.--Any risk  
21 retention groups doing business in this Commonwealth prior to  
22 the enactment of this act shall, within 30 days after the  
23 effective date of this act, comply with the provisions of this  
24 section.

25 (m) Penalties.--A risk retention group which violates any  
26 provision of this act shall be subject to fines and penalties  
27 applicable to admitted insurers generally, including revocation  
28 of its right to do business in this Commonwealth.

29 Section 6. Risk retention groups; notice, prohibited  
30 solicitation and ownership.

1 (a) Notice to purchasers.--Every application form for  
2 insurance from a risk retention group and every policy issued by  
3 a risk retention group shall contain, in ten-point type on the  
4 front page and the declaration page, the following notice:

5 NOTICE

6 This policy is issued by your risk retention group. Your  
7 risk retention group may not be subject to all of the  
8 insurance laws and regulations of your state. State  
9 insurance insolvency guaranty funds are not available for  
10 your risk retention group.

11 (b) Prohibited acts regarding solicitation or sale.--The  
12 following acts by a risk retention group are hereby prohibited:

13 (1) The solicitation or sale of insurance by a risk  
14 retention group to any person who is not eligible for  
15 membership in such group.

16 (2) The solicitation or sale of insurance by, or  
17 operation of, a risk retention group that has been found by a  
18 court of competent jurisdiction to be in a hazardous  
19 financial condition or financially impaired.

20 (c) Prohibition on ownership by an insurance company.--No  
21 risk retention groups shall be allowed to do business in this  
22 Commonwealth if an insurance company is directly or indirectly a  
23 member or owner of such risk retention group, other than in the  
24 case of a risk retention group all of whose members are  
25 insurance companies.

26 Section 7. Guaranty funds and compulsory associations.

27 (a) Prohibition.--No risk retention group shall be required  
28 or permitted to join or contribute financially to any insurance  
29 insolvency guaranty fund, or similar mechanism, in this  
30 Commonwealth, nor shall any risk retention group, or its



1 insureds or claimants against its insureds, receive any benefit  
2 from any such fund for claims arising under the insurance  
3 policies issued by such risk retention group.

4 (b) Risks not covered.--When a purchasing group obtains  
5 insurance covering its members' risks from an insurer not  
6 admitted in this Commonwealth or from a risk retention group, no  
7 such risks, wherever resident or located, shall be covered by  
8 any insurance guaranty fund or similar mechanism in this  
9 Commonwealth.

10 (c) Limitation on claims covered.--When a purchasing group  
11 obtains insurance covering its members' risks from an admitted  
12 insurer, only covered claims as defined in the act of November  
13 25, 1970 (P.L.716, No.232), known as The Pennsylvania Insurance  
14 Guaranty Association Act, shall be covered by the State guaranty  
15 fund.

16 (d) Apportionment of losses and expenses.--The commissioner  
17 may require risk retention groups not chartered in this  
18 Commonwealth to participate, and may exempt domestic risk  
19 retention groups from participation, in any mechanism  
20 established or authorized under the laws of this Commonwealth  
21 for the equitable apportionment among insurers of liability  
22 insurance losses and expenses incurred on policies written  
23 through such mechanism; and such risk retention groups shall  
24 submit sufficient information to the commissioner to enable the  
25 commissioner to apportion on a nondiscriminatory basis the risk  
26 retention group's proportionate share of such losses and  
27 expenses.

28 Section 8. Countersignatures not required.

29 A policy of insurance issued by a risk retention group to any  
30 member of that group shall not be required to be countersigned

1 by an insurance agent or broker residing in this Commonwealth.

2 Section 9. Purchasing groups; exemption from certain laws

3 relating to the group purchase of insurance.

4 (a) General rule.--A purchasing group and its insurer or  
5 insurers shall be subject to all applicable laws of this  
6 Commonwealth, except that the purchasing group and its insurer  
7 or insurers shall be exempt, in regard to liability insurance  
8 for the purchasing group, from any law that would do any of the  
9 following:

10 (1) Prohibit the establishment of a purchasing group.

11 (2) Make it unlawful for an insurer to provide or offer  
12 to provide insurance on a basis providing, to a purchasing  
13 group or its members, advantages, based on their loss and  
14 expense experience, not afforded to other persons with  
15 respect to rates, policy forms, coverages or other matters.

16 (3) Prohibit a purchasing group or its members from  
17 purchasing insurance on a group basis described in paragraph  
18 (2).

19 (4) Prohibit a purchasing group from obtaining insurance  
20 on a group basis because the group has not been in existence  
21 for a minimum period of time or because any member has not  
22 belonged to the group for a minimum period of time.

23 (5) Require that a purchasing group must have a minimum  
24 number of members, common ownership or affiliation, or a  
25 certain legal form.

26 (6) Require that a certain percentage of a purchasing  
27 group must obtain insurance on a group basis.

28 (7) Otherwise discriminate against a purchasing group or  
29 any of its members.

30 (b) Additional exemption.--An insurer shall be exempt from

1 any laws of this Commonwealth which prohibits providing or  
2 offering to provide, to a purchasing group or its members,  
3 advantages, based on their loss and expense experience, not  
4 afforded to other persons with respect to rates, policy forms,  
5 coverages or other matters.

6 Section 10. Notice and registration requirements of purchasing  
7 groups.

8 (a) Notice.--A purchasing group which intends to do business  
9 in this Commonwealth shall, prior to doing such business,  
10 furnish notice to the commissioner which shall do all of the  
11 following:

12 (1) Identify the state in which the group is domiciled.

13 (2) Identify the principal place of business of the  
14 group.

15 (3) Identify all other states in which the group intends  
16 to do business or is doing business.

17 (4) Specify the kinds and classifications of liability  
18 insurance which the purchasing group intends to purchase.

19 (5) Specify the method by which, and the person or  
20 persons, if any, through whom, insurance will be offered to  
21 its members whose risks are resident or located in this  
22 Commonwealth.

23 (6) Identify the names and chartering jurisdictions of  
24 the insurance company or companies from which the group  
25 intends to purchase its insurance.

26 (7) Confirm that the insurer from which the purchasing  
27 group intends to purchase insurance has filed with the  
28 department, pursuant to section 354 of the act of May 17,  
29 1921 (P.L.682, No.284), known as The Insurance Company Law of  
30 1921, and all other provisions of insurance laws, rules and

1 regulations governing policy form and rate standards, with  
2 the rates and forms it intends to use to provide coverage for  
3 the risks resident in this Commonwealth.

4 (8) Provide such other information as may be required by  
5 the commissioner to verify that the purchasing group is  
6 qualified under the definition of "purchasing group" in  
7 section 3.

8 (b) Changes.--A purchasing group shall notify the  
9 commissioner within ten days as to any subsequent changes in any  
10 of the items set forth in subsection (a).

11 (c) Additional information.--Each purchasing group which is  
12 required to give notice pursuant to subsection (a) shall also  
13 furnish such information as may be required by the commissioner  
14 to do any of the following:

15 (1) Verify that the entity qualifies as a purchasing  
16 group.

17 (2) Determine the location of the purchasing group.

18 (3) Determine appropriate tax treatment.

19 (d) Statement of registration.--The purchasing group shall  
20 submit a statement of registration, for which a filing fee shall  
21 be imposed, which designates the commissioner as its agent  
22 solely for the purpose of receiving service of legal documents  
23 or process.

24 (1) The designation of the commissioner shall be  
25 accompanied by written designation of the name and address of  
26 the officer, agent or other person to whom such process shall  
27 be forwarded by the commissioner or his deputy on behalf of  
28 such purchasing group. In the event such designation is  
29 changed, a new certificate of designation shall be filed with  
30 the commissioner within ten days of such change.

1           (2) Service of process upon a purchasing group pursuant  
2 to this subsection shall be made by serving the commissioner,  
3 any deputy commissioner or any salaried employee of the  
4 department whom the commissioner designates for such purpose  
5 with two copies thereof and the payment of a fee to be  
6 published by notice in the Pennsylvania Bulletin. The  
7 commissioner shall forward a copy of such process by  
8 registered or certified mail to the purchasing group at the  
9 address given in its written certificate of designation, and  
10 shall keep a record of all process so served upon him.

11 Service of process so made shall be deemed made within the  
12 territorial jurisdiction of any court in this Commonwealth.

13           (3) Such requirements shall not apply in the case of a  
14 purchasing group which only purchases insurance that was  
15 authorized under the Products Liability Risk Retention Act of  
16 1981 (Public Law 97-45, 95 Stat. 949); and

17           (i) which in any state of the United States:

18                   (A) was domiciled before April 1, 1986; and

19                   (B) is domiciled on and after October 27, 1986;

20 and

21           (ii) which:

22                   (A) before October 27, 1986, purchased insurance  
23 from an insurance company licensed in any state;

24                   (B) since October 27, 1986, purchased its  
25 insurance from an insurance company licensed in any  
26 state;

27                   (C) was a purchasing group under the  
28 requirements of the Product Liability Risk Retention  
29 Act of 1981 before October 27, 1986; and

30                   (D) does not purchase insurance that was not

1 authorized for purposes of an exemption under that  
2 act, as in effect before October 27, 1986.

3 (e) Prior business.--Any purchasing group which was doing  
4 business in this Commonwealth prior to the enactment of this act  
5 shall, within 30 days after the effective date of this act,  
6 furnish notice to the commissioner pursuant to the provisions of  
7 subsection (a) and furnish such information as may be required  
8 pursuant to subsections (b), (c) and (d).

9 Section 11. Restrictions on insurance purchased by purchasing  
10 groups.

11 (a) Purchase of liability insurance.--If a purchasing group  
12 located in this Commonwealth purchases liability insurance for  
13 its members from a risk retention group that is not chartered  
14 and licensed in this Commonwealth or from a non-admitted  
15 insurer, it may do so only through licensed brokers and surplus  
16 lines agents acting pursuant to the act of January 24, 1966  
17 (1965 P.L.1509, No.531), referred to as the Surplus Lines  
18 Insurance Law, as set forth in section 15(b) of this act.

19 (b) Terms of liability insurance policy.--The terms of any  
20 liability insurance policy obtained by a purchasing group shall  
21 not provide or be construed to provide insurance coverage  
22 prohibited generally by state statute or declared unlawful by  
23 the highest court of the state whose law applies to such policy.  
24 If the laws of this Commonwealth apply to an insurance policy  
25 obtained by a purchasing group, the terms of that policy shall  
26 not provide or be construed to provide insurance coverage  
27 prohibited generally by state statute or declared unlawful by  
28 the highest court of this Commonwealth which has construed such  
29 coverage.

30 (c) Information to be furnished.--A purchasing group which

1 obtains liability insurance from a non-admitted insurer that is  
2 an eligible surplus lines insurer in this Commonwealth or from a  
3 risk retention group shall inform each of the members of such  
4 purchasing group which has a risk resident or located in this  
5 Commonwealth that such risk is not protected by an insurance  
6 insolvency guaranty fund in this Commonwealth, and that such  
7 risk retention group or such non-admitted insurer may not be  
8 subject to all insurance laws and regulations of this  
9 Commonwealth.

10 (d) Limitation.--No purchasing group may purchase insurance  
11 providing for a deductible or self-insured retention applicable  
12 to the group as a whole; however, coverage may provide for a  
13 deductible or self-insured retention applicable to individual  
14 members.

15 (e) Standards.--Purchases of insurance by purchasing groups  
16 are subject to the same standards regarding aggregate limits  
17 which are applicable to all purchases of group insurance.

18 Section 12. Insurance company interest in purchasing groups  
19 doing business in this Commonwealth prohibited.

20 No insurer, or director, officer or employee of an insurer,  
21 may have any interest in a purchasing group doing business in  
22 this Commonwealth. Prohibited interest includes, but is not  
23 limited to, soliciting members for the purchasing group, and  
24 belonging to the purchasing group as a member, provided that  
25 nothing in this section will prohibit a purchasing group  
26 composed entirely of insurers, or directors, officers or  
27 employees of insurers, if coverage is obtained from a company  
28 not related to the group members.

29 Section 13. Taxation of premiums paid by purchasing groups.

30 (a) Premiums subject to taxation.--

1           (1) Premiums paid for coverage obtained from admitted  
2 insurers and risk retention groups doing business in this  
3 Commonwealth shall be taxed on the same basis as premiums  
4 paid to admitted insurers under section 902 of the act of  
5 March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of  
6 1971.

7           (2) Premiums paid for coverage obtained from a non-  
8 admitted insurer in compliance with this act shall be taxed  
9 at the rate applicable to premiums paid to surplus lines  
10 insurers pursuant to section 11(a) of the act of January 24,  
11 1966 (1965 P.L.1509, No.531), referred to as the Surplus  
12 Lines Insurance Law.

13       (b) Responsibility for remitting taxes.--

14           (1) To the extent that the purchasing group or its  
15 members pay premiums for coverage of risks resident or  
16 located within this Commonwealth to admitted insurers or risk  
17 retention groups doing business in this Commonwealth, the  
18 insurer or risk retention group receiving those premiums is  
19 responsible for remitting the tax to the Department of  
20 Revenue.

21           (2) To the extent that the purchasing group or its  
22 members pay premiums for coverage of risks resident or  
23 located within this Commonwealth to a non-admitted insurer,  
24 the surplus lines agent who places the business shall collect  
25 and remit the taxes for premiums.

26           (3) To the extent a surplus lines agent does not effect  
27 coverage, the purchasing group shall collect and remit the  
28 tax for coverage of risks resident or located in this  
29 Commonwealth. To the extent the purchasing group does not  
30 remit the tax, the purchasing group shall inform each member



1 of the responsibility for individual remittance of the tax.  
2 Section 14. Administrative and procedural authority regarding  
3 risk retention groups and purchasing groups.

4 The commissioner is authorized to make use of any of the  
5 powers established under the insurance laws of this Commonwealth  
6 to enforce the laws of this Commonwealth not specifically  
7 preempted by the Liability Risk Retention Act of 1986 (Public  
8 Law 99-563, 15 U.S.C. § 3901 et seq.), including the  
9 commissioner's administrative authority to investigate, issue  
10 subpoenas, conduct depositions and hearings, issue orders,  
11 impose penalties and seek injunctive relief. With regard to any  
12 investigation, administrative proceedings or litigation, the  
13 commissioner may rely on the procedural laws of this  
14 Commonwealth. The injunctive authority of the commissioner in  
15 regard to risk retention groups is restricted by the requirement  
16 that any injunction be issued by a court of competent  
17 jurisdiction.

18 Section 15. Duty of agent or broker to obtain license.

19 (a) Risk retention groups not chartered in this  
20 Commonwealth.--

21 (1) No person, firm, association or corporation shall  
22 act or aid in any manner in soliciting, negotiating or  
23 procuring liability insurance in this Commonwealth from a  
24 risk retention group not chartered in this Commonwealth  
25 unless such person, firm, association or corporation is  
26 licensed as a broker in accordance with section 622 of the  
27 act of May 17, 1921 (P.L.789, No.285), known as The Insurance  
28 Department Act of one thousand nine hundred and twenty-one.

29 (2) No authorized or acknowledged agent of a risk  
30 retention group not chartered in this Commonwealth who acts

1 as such in the solicitation of, negotiation for or  
2 procurement of liability insurance, other than as a licensed  
3 insurance broker, may act on behalf of a risk retention group  
4 not chartered in this Commonwealth unless such agent is  
5 licensed as an insurance agent in accordance with the law of  
6 the state where the risk retention group is licensed.

7 (b) Purchasing groups.--

8 (1) No person, firm, association or corporation shall  
9 act or aid in any manner in negotiating or procuring  
10 liability insurance in this Commonwealth for a purchasing  
11 group or for any of its members from an admitted insurer or a  
12 domestic risk retention group unless such person, firm,  
13 association or corporation is licensed either as an insurance  
14 agent in accordance with section 603 of the act of May 17,  
15 1921 (P.L.789, No.285), known as The Insurance Department Act  
16 of one thousand nine hundred and twenty-one, or as an  
17 insurance broker in accordance with section 622 of The  
18 Insurance Department Act of thousand nine hundred and twenty-  
19 one, or from a risk retention group chartered in a state  
20 unless the person, firm, association or corporation has  
21 complied with the provisions of paragraph (a)(1).

22 (2) No person, firm, association or corporation shall  
23 act or aid in any manner in negotiating or procuring  
24 liability insurance from a non-admitted insurer on behalf of  
25 a purchasing group located in this Commonwealth unless such  
26 person, firm, association or corporation is licensed as a  
27 surplus lines agent in accordance with section 8 of the act  
28 of January 24, 1966 (1965 P.L.1509, No.531), referred to as  
29 the Surplus Lines Insurance Law.

30 (3) Notwithstanding the provisions of section 8(a) of

1 the Surplus Lines Insurance Law, a nonresident of this  
2 Commonwealth who acts in this Commonwealth solely on behalf  
3 of a purchasing group located in this Commonwealth in  
4 obtaining liability insurance with a non-admitted insurer is  
5 exempt from the requirements of maintaining an office in this  
6 Commonwealth in order to obtain a surplus lines agent's  
7 license for the limited purpose of effecting coverage for  
8 such purchasing group.

9 (c) Solicitation.--Nothing in this section shall prohibit  
10 direct solicitation by officers or employees of risk retention  
11 groups or risk purchasing groups of Pennsylvania residents.

12 (d) Information as to notice requirement.--Every person,  
13 firm, association or corporation licensed pursuant to the  
14 provisions of subsection (a) or (b) on business placed with risk  
15 retention groups or written through a purchasing group shall  
16 inform each prospective insured of the provisions of the notice  
17 required by section 6(a) in the case of a risk retention group  
18 and by section 11(c) in the case of a purchasing group.

19 Section 16. Financial responsibility.

20 (a) General rule.--Whenever, pursuant to the laws of this  
21 Commonwealth or any local law, a demonstration of financial  
22 responsibility is required as a condition for obtaining a  
23 license or permit to undertake specified activities, if any such  
24 requirement may be satisfied only by obtaining insurance  
25 coverage from an admitted insurer or non-admitted insurer that  
26 qualifies as an eligible surplus lines insurer, such requirement  
27 may not be satisfied by purchasing insurance from a risk  
28 retention group not chartered and licensed in this Commonwealth  
29 or through a risk purchasing group which has purchased coverage  
30 from a risk retention group not chartered and licensed in this

1 Commonwealth.

2 (b) Applicability of Motor Vehicle Financial Responsibility  
3 Law.--Any risk retention group and any insurer who transacts the  
4 business of insurance in this Commonwealth with a purchasing  
5 group or its members shall not be exempt from the policy form or  
6 coverage requirements of 75 Pa.C.S. Ch. 17 (relating to  
7 financial responsibility).

8 Section 17. Binding effect of orders issued in United States  
9 District Court.

10 An order issued by any district court of the United States  
11 enjoining a risk retention group from soliciting or selling  
12 insurance, or operating in any state, or in all states or in any  
13 territory or possession of the United States, upon a finding  
14 that such a group is in a hazardous financial or financially  
15 impaired condition shall be enforceable in the courts of this  
16 Commonwealth.

17 Section 18. Rules and regulations.

18 The commissioner may establish and, from time to time, amend  
19 such rules as may be necessary or desirable to carry out the  
20 provisions of this act.

21 Section 19. Severability.

22 If any clause, sentence, paragraph, section or part of this  
23 act, or the application thereof to any person or circumstances,  
24 shall, for any reason, be adjudged by any court of competent  
25 jurisdiction to be invalid, such judgment shall not affect,  
26 impair or invalidate the remainder of this act, and the  
27 application thereof to other persons or circumstances, but shall  
28 be confined in its operation to the clause, sentence, paragraph,  
29 section or part thereof directly involved in the controversy in  
30 which such judgment shall have been rendered and to the person

- 1 or circumstances involved.
- 2 Section 20. Effective date.
- 3 This act shall take effect immediately.