

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

## HOUSE BILL

No. 2030 Session of  
1989

INTRODUCED BY YANDRISEVITS, BILLOW, MICHLOVIC, MELIO, PESCI,  
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OCTOBER 23, 1989

AS REPORTED FROM COMMITTEE ON INSURANCE, HOUSE OF  
REPRESENTATIVES, AS AMENDED, NOVEMBER 28, 1989

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

20 Section 1. Short title.

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

23 Section 2. Statement of purpose.

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

29 Section 3. Definitions.

30 The following words and phrases when used in this act shall

1 have the meanings given to them in this section unless the  
2 context clearly indicates otherwise:

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

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

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

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

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

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

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

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

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

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

30 "Eligible surplus lines insurer." A non-admitted insurer

1 doing business in this Commonwealth in conformance with section  
2 7 of the act of January 24, 1966 (1965 P.L.1509, No.531),  
3 referred to as the Surplus Lines Insurance Law.

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

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

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

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

16 "Liability."

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

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

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

27 (2) The term does not include personal risk liability  
28 and an employer's liability with respect to its employees  
29 other than legal liability under the Employers' Liability Act  
30 (45 U.S.C. § 51 et seq.).

1 "Located." A purchasing group that is doing business in this  
2 Commonwealth.

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

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

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

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

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

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

28 (4) Pro forma financial statements and projections.

29 (5) Appropriate opinions by a qualified, independent  
30 casualty actuary, including a determination of minimum

1 premium or participation levels required to commence  
2 operations and to prevent a hazardous financial condition.

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

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

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

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

21 "Purchasing group." Any group which:

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

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

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

1 services, premises or operations; and

2 (4) is domiciled in any state.

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

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

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

10 (3) which:

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

15 (ii) before January 1, 1985, was chartered or  
16 licensed and authorized to engage in the business of  
17 insurance under the laws of Bermuda or the Cayman Islands  
18 and, before such date, had certified to the insurance  
19 commissioner of at least one state that it satisfied the  
20 capitalization requirements of such state, except that  
21 any such group shall be considered to be a risk retention  
22 group only if it has been engaged in business  
23 continuously since such date and only for the purpose of  
24 continuing to provide insurance to cover product  
25 liability or completed operations liability, as such  
26 terms were defined in the Product Liability Risk  
27 Retention Act of 1981 (Public Law 97-45, 95 Stat. 949),  
28 before the date of the enactment of the Liability Risk  
29 Retention Act of 1986 (Public Law 99-563, 15 U.S.C. §  
30 3901 et seq.);

1           (4) which does not exclude any person from membership in  
2 the group solely to provide for members of such a group a  
3 competitive advantage over such a person;

4           (5) which:

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

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

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

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

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

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



(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

1 of subsection (b), relating to the submission of a plan of  
2 operation or feasibility study, shall not apply with respect to  
3 any kind or classification of liability insurance which:

4 (1) was defined in the Product Liability Risk Retention  
5 Act of 1981 (Public Law 97-45, 95 Stat. 949), before October  
6 27, 1986; and

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

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

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

14 (2) The identity of those individuals who organized the  
15 group or who will provide administrative services or  
16 otherwise influence or control the activities of the group.

17 (3) The amount and nature of initial capitalization.

18 (4) The coverages to be afforded.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 public accountant and shall contain a statement of opinion on  
2 loss and loss adjustment expense reserves made by a member of  
3 the American Academy of Actuaries or a qualified loss reserve  
4 specialist.

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

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

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

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

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

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

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

(g) Taxation of risk retention groups.--

(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 Commonwealth and shall report to the commissioner the gross direct premiums, less returns thereon, written for risks resident or located within this Commonwealth. Such 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, pursuant to section 902 of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971.

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

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

(i) Examination regarding financial condition.--Any risk retention group shall submit to an examination by the Insurance Commissioner of the Commonwealth to determine its financial

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

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

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

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

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

30 Section 6. Risk retention groups; notice, prohibited

1                   solicitation and ownership.

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

6                                   NOTICE

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

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

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

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

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

27 Section 7. Guaranty funds and compulsory associations.

28       (a) Prohibition.--No risk retention group shall be required  
29 or permitted to join or contribute financially to any insurance  
30 insolvency guaranty fund, or similar mechanism, in this



1 Commonwealth, nor shall any risk retention group, or its  
2 insureds or claimants against its insureds, receive any benefit  
3 from any such fund for claims arising under the insurance  
4 policies issued by such risk retention group.

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

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

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

29 Section 8. Countersignatures not required.

30 A policy of insurance issued by a risk retention group to any

1 member of that group shall not be required to be countersigned  
2 by an insurance agent or broker residing in this Commonwealth.

3 Section 9. Purchasing groups; exemption from certain laws  
4 relating to the group purchase of insurance.

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

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

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

17 (3) Prohibit a purchasing group or its members from  
18 purchasing insurance on a group basis described in paragraph  
19 (2).

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

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

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

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

1 (b) Additional exemption.--An insurer shall be exempt from  
2 any laws of this Commonwealth which prohibits providing or  
3 offering to provide, to a purchasing group or its members,  
4 advantages, based on their loss and expense experience, not  
5 afforded to other persons with respect to rates, policy forms,  
6 coverages or other matters.

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

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

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

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

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

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

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

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

27 (7) Confirm that the insurer from which the purchasing  
28 group intends to purchase insurance has filed with the  
29 department, pursuant to section 354 of the act of May 17,

30 1921 (P.L.682, No.284), known as The Insurance Company Law of

1 1921, and all other provisions of insurance laws, rules and  
2 regulations governing policy form and rate standards, with  
3 the rates and forms it intends to use to provide coverage for  
4 the risks resident in this Commonwealth.

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

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

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

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

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

19 (3) Determine appropriate tax treatment.

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

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

1 the commissioner within ten days of such change.

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

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

14 (3) Such requirements shall not apply in the case of a  
15 purchasing group which only purchases insurance that was  
16 authorized under the Products Liability Risk Retention Act of  
17 1981 (Public Law 97-45, 95 Stat. 949); and

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

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

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

21 and

22 (ii) which:

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

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

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

1 (D) does not purchase insurance that was not  
2 authorized for purposes of an exemption under that  
3 act, as in effect before October 27, 1986.

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

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

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

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

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

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

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

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

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

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

1 (a) Premiums subject to taxation.--

2 (1) Premiums paid for coverage obtained from admitted  
3 insurers and risk retention groups doing business in this  
4 Commonwealth shall be taxed on the same basis as premiums  
5 paid to admitted insurers under section 902 of the act of  
6 March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of  
7 1971.

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

14 (b) Responsibility for remitting taxes.--

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

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

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



1        remit the tax, the purchasing group shall inform each member  
2        of the responsibility for individual remittance of the tax.

3    Section 14.    Administrative and procedural authority regarding  
4                    risk retention groups and purchasing groups.

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

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

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

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

30            (2)   No authorized or acknowledged agent of a risk

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

8 (b) Purchasing groups.--

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

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

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

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

(d) Information as to notice requirement.--Every person, firm, association or corporation licensed pursuant to the provisions of subsection (a) or (b) 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 section 6(a) in the case of a risk retention group and by section 11(c) in the case of a purchasing group.

#### Section 16. Financial responsibility.

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

1 from a risk retention group not chartered and licensed in this  
2 Commonwealth.

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

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

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

18 Section 18. Rules and regulations.

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

22 Section 19. Severability.

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

1   which such judgment shall have been rendered and to the person  
2   or circumstances involved.  
3   Section 20.   Effective date.  
4       This act shall take effect immediately.