MODEL RISK RETENTION ACT

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Section 1. Purpose

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

liability for activities which are completed or abandoned before the date of the occurrence giving rise to the liability;

Section 2. Definitions

As used in this Act

A. "Commissioner" [director, superintendent] means the insurance commissioner [director, superintendent] of [insert name of state] or the commissioner, director or superintendent of insurance in any other state that

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(7) Reporting Non-Compliance The captive manager, president or chief executive officer of the risk retention group shall promptly notify the domestic regulator in writing if either becomes aware of any material non-compliance with any of these governance standards.

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

Section 4. Risk Retention Groups Not Chartered in this State

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

Drafting Note: RRA of 1986 exempts a risk retention group from any state law regarding its operation in a state in which it is not

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Section 7. Purchasing Groups Exemption from Certain Laws

A purchasing group and its insurer or insurers shall be subject to all applicable laws of this state, except that a

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. Paid first by such insurance source, and if not by such source by the agent or broker for the purchasing group, and if not by such agent or broker then by the purchasing group, and if not by such purchasing group then by each of its members.

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

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

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

Drafting Note:

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

Drafting Note

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Section 16 Effective Date

This Act will be effective on [insert date].

Chronological Summary of Actions (all references are to the Proceedings of the NAIC).

1983 Proc. I 6, 35, 789-790, 795, 799-805 (adopted).
1987 Proc. I 11, 20, 744, 857-865 (amended and reprinted).
1987 Proc. II 15, 24, 774-775, 776-788 (amended).
1991 Proc. II 25, 58, 976, 992-1003 (amended and reprinted)
2011 Proc. 3rd Quarter Vol. I 114, 119, 132-134, 339 (amended).
2022 (technical edit).

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