

Attachments

42 U.S.C. § 9671

As used in this subchapter –

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(3) Risk retention group

The term "risk retention group" means any corporation or other limited liability association taxable as a corporation, or as an insurance company, formed under the laws of any State –

(A) whose primary activity consists of assuming and spreading all, or any portion, of the pollution liability of its group members;

(B) which is organized for the primary purpose of conducting the activity described under subparagraph (A);

(C) which is chartered or licensed as an insurance company and authorized to engage in the business of insurance under the laws of any State; and

(D) which does not exclude any person from membership in the group solely to provide for members of such a group a competitive advantage over such a person.

42 U.S.C. § 9673

(a) Exemption

Except as provided in this section, a risk retention group shall be exempt from the following:

(1) A State law, rule, or order which makes unlawful, or regulates, directly or indirectly, the operation of a risk retention group.

(2) A State law, rule, or order which requires or permits a risk retention group to participate in any insurance insolvency guaranty association to which an insurer licensed in the State is required to belong.

(3) A State law, rule, or order which requires any insurance policy issued to a risk retention group or any member of the group to be countersigned by an insurance agent or broker residing in the State.

(4) A State law, rule, or order which otherwise discriminates against a risk retention group or any of its members.

(b) Exceptions

(1) State laws generally applicable. Nothing in subsection (a) of this section shall be construed to affect the applicability of State laws generally applicable to persons or corporations. The State in which a risk retention group is chartered may regulate the formation and operation of the group.

(2) State regulations not subject to exemption Subsection (a) of this section shall not apply to any State law which requires a risk retention group to do any of the following:

- (A) Comply with the unfair claim settlement practices law of the State.
- (B) Pay, on a nondiscriminatory basis, applicable premium and other taxes which are levied on admitted insurers and surplus line insurers, brokers, or policyholders under the laws of the State.
- (C) Participate, on a nondiscriminatory basis, in any mechanism established or authorized under the law of the State for the equitable apportionment among insurers of pollution liability insurance losses and expenses incurred on policies written through such mechanism.
- (D) Submit to the appropriate authority reports and other information required of licensed insurers under the laws of a State relating solely to pollution liability insurance losses and expenses.
- (E) Register with and designate the State insurance commissioner as its agent solely for the purpose of receiving service of legal documents or process.
- (F) Furnish, upon request, such commissioner a copy of any financial report submitted by the risk retention group to the commissioner of the chartering or licensing jurisdiction.
- (G) Submit to an examination by the State insurance commissioner in any State in which the group is doing business to determine the group's financial condition, if -
 - (i) the commissioner has reason to believe the risk retention group is in a financially impaired condition; and
 - (ii) the commissioner of the jurisdiction in which the group is chartered has not begun or has refused to initiate an examination of the group.
- (H) Comply with a lawful order issued in a delinquency proceeding commenced by the State insurance commissioner if the commissioner of the jurisdiction in which the group is chartered has failed to initiate such a proceeding after notice of a finding of financial impairment under subparagraph (G).

(c) Application of exemptions

The exemptions specified in subsection (a) of this section apply to –

- (1) pollution liability insurance coverage provided by a risk retention group for -
 - (A) such group; or
 - (B) any person who is a member of such group;
- (2) the sale of pollution liability insurance coverage for a risk retention group; and
- (3) the provision of insurance related services or management services for a risk retention group or any member of such a group.

(d) Agents or brokers

A State may require that a person acting, or offering to act, as an agent or broker for a risk retention group obtain a license from that State, except that a State may not impose any qualification or requirement which discriminates against a nonresident agent or broker.

§ 280.97 Insurance and risk retention group coverage.

(a) An owner or operator may satisfy the requirements of §290.93 by obtaining liability insurance that conforms to the requirements of this section from a qualified insurer or risk retention group. Such insurance may be in the form of a separate insurance policy or an endorsement to an existing insurance policy.