CHAPTER 72-A

MAINE LIABILITY RISK RETENTION ACT

§6091. Short title

This chapter shall be known and may be cited as the Maine Liability Risk Retention Act. [PL 1987, c. 481, §3 (NEW).]

SECTION HISTORY

PL 1987, c. 481, §3 (NEW).

§6092. Purpose

The purpose of this Act is to regulate the formation and operation of risk retention groups and purchasing groups in this State formed pursuant to the provisions of the Risk Retention Amendments of 1986, United States Code, Title 15, Section 3901, et seq., to the extent permitted by that law. [PL 1987, c. 481, §3 (NEW).]

SECTION HISTORY

PL 1987, c. 481, §3 (NEW).

§6093. Definitions

As used in this Act, unless the context indicates otherwise, the following terms have the following meanings. [PL 1987, c. 481, §3 (NEW).]

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

A. Any person who performs that work; or [PL 1987, c. 481, §3 (NEW).]

B. Any person who hires an independent contractor to perform that work, but shall include liability for activities which are completed or abandoned before the date of the occurrence giving rise to the liability. [PL 1987, c. 481, §3 (NEW).]

[PL 1987, c. 481, §3 (NEW).]

2. Domicile. "Domicile," for purposes of determining the state in which a purchasing group is domiciled, means:

A. For a corporation, the state in which the purchasing group is incorporated; and [PL 1987, c. 481, §3 (NEW).]

B. For an unincorporated entity, the state of its principal place of business. [PL 1987, c. 481, §3 (NEW).]

[PL 1987, c. 481, §3 (NEW).]

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

A. To meet obligations to policyholders with respect to known claims and reasonably anticipated claims; or [PL 1987, c. 481, §3 (NEW).]

B. To pay other obligations in the normal course of business. [PL 1987, c. 481, §3 (NEW).]

[PL 1987, c. 481, §3 (NEW).]

4. Impairment. "Impairment," as to a risk retention group, exists when:

A. If a stock corporation, the sum of the group's liabilities and paid-in capital stock exceeds its assets; [PL 1987, c. 481, §3 (NEW).]

B. If a mutual company, the sum of its liabilities and required minimum basic surplus exceeds its assets; and [PL 1987, c. 481, §3 (NEW).]

C. If other than a stock or mutual company, the sum of liabilities and any fund balance equal to the amount of basic surplus required of a mutual company exceeds its assets. [PL 1987, c. 481, §3 (NEW).]

[PL 1987, c. 481, §3 (NEW).]

5. Insurance. "Insurance" means primary insurance, excess insurance, reinsurance, surplus lines insurance and any other arrangement for shifting and distributing risk which is determined to be insurance under the laws of this State.

[PL 1987, c. 481, §3 (NEW).]

6. Liability. "Liability" means:

A. Legal liability for damages, including costs of defense, legal costs and fees and other claims expenses, because of injuries to other persons, damage to their property or other damage or loss to such other persons resulting from or arising out of:

(1) Any business, whether profit or nonprofit, trade, product, services, including professional services, premises or operations; or

(2) Any activity of any state or local government or any agency or political subdivision of state or local government; and [PL 1987, c. 481, §3 (NEW).]

B. Does not include personal risk liability and an employer's liability with respect to its employees other than legal liability under the Federal Employers' Liability Act, United States Code, Title 45, Section 51, et seq. [PL 1987, c. 481, §3 (NEW).]

[PL 1987, c. 481, §3 (NEW).]

7. Personal risk liability. "Personal risk liability" means liability for damages because of injury to any person, damage to property or other loss or damage resulting from any personal, familial or household responsibilities or activities, rather than from responsibilities or activities referred to in subsection 6.

[PL 1987, c. 481, §3 (NEW).]

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

A. Information sufficient to verify that its members are engaged in businesses or activities similar or related with respect to the liability to which the members are exposed by virtue of any related, similar or consumer business, trade, product, services, premises or operation; [PL 1987, c. 481, §3 (NEW).]

B. The coverages, deductibles, coverage limits, rates and rating classification systems for each line of insurance the group intends to offer; [PL 1987, c. 481, §3 (NEW).]

C. Historical and expected loss experience, to the extent available, of the proposed members and national experience of similar exposures; [PL 1987, c. 481, §3 (NEW).]

D. Pro forma financial statements and projections; [PL 1987, c. 481, §3 (NEW).]

E. Appropriate opinions by a qualified, independent casualty actuary, including a determination of minimum premium or participation levels required to commence operations and to prevent a hazardous financial condition; [PL 1987, c. 481, §3 (NEW).]

F. Identification of management, underwriting and claim procedures, marketing methods, managerial oversight methods and investment policies; and [PL 1987, c. 481, §3 (NEW).]

G. Such other matters as may be prescribed by the superintendent for liability insurance companies authorized by the insurance laws of the state in which the risk retention group is chartered. [PL 1987, c. 481, §3 (NEW).]

[PL 1987, c. 481, §3 (NEW).]

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

[PL 1987, c. 481, §3 (NEW).]

10. Product Liability Risk Retention Act of 1981. "Product Liability Risk Retention Act of 1981" means the United States Public Law 97-45, the United States Code, Title 15, Section 3901, et seq.

[PL 1987, c. 481, §3 (NEW).]

11. Purchasing group. "Purchasing group" means any group which:

A. Has, as one of its purposes, the purchase of liability insurance on a group basis; [PL 1987, c. 481, §3 (NEW).]

B. Purchases such insurance only for its group members and only to cover their similar or related liability exposure, as described in paragraph C; [PL 1987, c. 481, §3 (NEW).]

C. Is composed of members whose businesses or activities are similar or related with respect to the liability to which members are exposed by virtue of any related, similar or common business, trade, product, services, premises or operations; and [PL 1987, c. 481, §3 (NEW).]

D. Is domiciled in any state. [PL 1987, c. 481, §3 (NEW).]

[PL 1987, c. 481, §3 (NEW).]

12. Risk Retention Amendments of 1986. "Risk Retention Amendments of 1986" means United States Public Law 99-563, United States Code, Title 15, Section 3901, et seq.

[RR 2009, c. 2, §71 (COR).]

13. Risk retention group. "Risk retention group" means any corporation or other limited liability association:

A. Whose primary activity consists of assuming and spreading all, or any portion, of the liability exposure of its group members; [PL 1987, c. 481, §3 (NEW).]

B. Which is organized for the primary purpose of conducting the activity described under paragraph A; [PL 1987, c. 481, §3 (NEW).]

C. Which:

(1) Is chartered and licensed as a liability insurance company and authorized to engage in the business of insurance under the laws of any state; or

(2) Before January 1, 1985, was chartered or licensed and authorized to engage in the business of insurance under the laws of Bermuda or the Cayman Islands and, before such date, had certified to the insurance superintendent of at least one state, which certification was accepted, that it satisfied the capitalization requirements of that state, except that any such group shall be considered to be a risk retention group only if it has been engaged in business continuously since that date and only for the purpose of continuing to provide insurance to cover product

liability or completed operations liability, as such terms were defined in the Product Liability Risk Retention Act of 1981, before the date of the enactment of the Risk Retention Amendments of 1986; [PL 1987, c. 481, §3 (NEW).]

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; [PL 1987, c. 481, §3 (NEW).]

E. Which:

(1) Has, as its owners, only persons who comprise the membership of the risk retention group and who are provided insurance by such group; or

(2) Has, as its sole owner, an organization which:

(a) Has as its members only persons who comprise the membership of the risk retention group; and

(b) Has as its owners only persons who comprise the membership of the risk retention group and who are provided insurance by such groups; [PL 1987, c. 481, §3 (NEW).]

F. Whose members are engaged in businesses or activities similar or related, with respect to the liability of which those members are exposed by virtue of any related, similar or common business, trade, product, services, premises or operations; [PL 1987, c. 481, §3 (NEW).]

G. Whose activities do not include the provision of insurance other than:

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

(2) Reinsurance with respect to the liability of any other risk retention group, or any members of such other group, which is engaged in businesses or activities so that this group or member meets the requirement described in paragraph F for membership in the risk retention group which provides that reinsurance; and [PL 1987, c. 481, §3 (NEW).]

H. The name of which includes the phrase "Risk Retention Group." [PL 1987, c. 481, §3 (NEW).]

[PL 1987, c. 481, §3 (NEW).]

14. State. "State" means any state of the United States or the District of Columbia.
[PL 1987, c. 481, §3 (NEW).]

15. Superintendent. "Superintendent" means the Superintendent of Insurance of this State or the commissioner, director or superintendent of insurance in any other state.
[PL 1987, c. 481, §3 (NEW).]

SECTION HISTORY

PL 1987, c. 481, §3 (NEW). RR 2009, c. 2, §71 (COR).

§6094. Risk retention groups chartered in this State

A risk retention group shall be chartered and authorized, pursuant to the provisions of this title, as a liability insurer to write only liability insurance pursuant to this Act and, except as provided elsewhere in this Act, must comply with all the laws, rules and requirements applicable to insurers chartered and licensed in this State and with section 6095 to the extent these requirements are not a limitation on laws, rules or requirements of this State. Before it may offer insurance in any state, each risk retention group shall also submit for approval to the superintendent a plan of operation or a feasibility study and revisions of that plan or study if the group intends to offer any additional lines of liability insurance. The group shall not offer any additional kinds of liability insurance in this State or in any other state, until a revision of such plan or study is approved by the superintendent. [PL 1987, c. 481, §3 (NEW).]

In addition to other requirements for licensure, the risk retention group shall, at the time of filing its application for license, provide to the superintendent in summary form the following information: The identity of the initial members of the group, the identity of those individuals who organized the group or who will provide administrative services or otherwise influence or control the activities of the group, the amount, source and nature of initial capitalization, the coverages to be afforded, and the states in which the group intends to operate. Upon receipt of the information the superintendent shall forward it to the National Association of Insurance Commissioners. This notification shall not be deemed to satisfy other requirements of this chapter. [PL 1987, c. 481, §3 (NEW).]

SECTION HISTORY

PL 1987, c. 481, §3 (NEW).

§6095. 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 must comply with the laws of this State in the following manner. [PL 1987, c. 481, §3 (NEW).]

1. Notice of operations and designation of agent for service of process. Before offering insurance in this State, a risk retention group shall submit to the superintendent:

A. A statement identifying the state or states in which the risk retention group is chartered and licensed as a liability insurance company, the date of chartering and organization, its principal place of business and such other information, including information on its membership, as the superintendent may require to verify that the risk retention group is qualified under section 6093, subsection 13; [PL 1987, c. 481, §3 (NEW).]

B. A copy of its plan of operation or a feasibility study and applicable revisions of the plan or study submitted to its state of domicile, provided that the provision relating to the submission of a plan of operation or a feasibility study does not apply with respect to any line or classification of liability insurance that was defined in the Product Liability Risk Retention Act of 1981 before October 27, 1986 and was offered before that date by any risk retention group that had been chartered and operating for not less than 3 years before that date; and [PL 1997, c. 592, §73 (AMD).]

C. A designation of an agent for the purpose of receiving service of legal documents or process. That designation is subject to the provisions of section 421, except that the appointment of a private agent is optional. A risk retention group that does not elect to designate an agent in accordance with section 421, subsection 1 shall appoint the superintendent as its agent. [PL 2013, c. 238, Pt. E, §3 (AMD).]

[PL 2013, c. 238, Pt. E, §3 (AMD).]

2. Financial condition. Any risk retention group transacting business in this State shall submit to the superintendent:

A. Annually, on or before March 1st, a copy of the group's financial statement submitted to the state in which the risk retention group is chartered and licensed, which shall be certified by an independent public accountant and contain a statement of opinion on loss and loss adjustment expense reserves made by a member of the American Academy of Actuaries who is qualified to certify casualty loss reserves; [PL 1987, c. 481, §3 (NEW).]

B. A copy of each report of examination of the risk retention group as certified by the superintendent or public official conducting the examination; [PL 1987, c. 481, §3 (NEW).]

C. Upon request by the superintendent, a copy of any audit performed with respect to the risk retention group; and [PL 1987, c. 481, §3 (NEW).]

D. Such information as may be required to verify its continuing qualification as a risk retention group under section 6093, subsection 13. [PL 1987, c. 481, §3 (NEW).]

[PL 1987, c. 481, §3 (NEW).]

3. Taxation. Each risk retention group shall be responsible for the payment of premium tax in accordance with Title 36, section 2513-A.
[PL 1987, c. 481, §3 (NEW).]

4. Deceptive, false or fraudulent practices. To the extent not preempted by the Risk Retention Amendments of 1986, any risk retention group shall be subject to the provisions of chapter 23, and Title 5, chapter 10.
[PL 1987, c. 481, §3 (NEW).]

5. Examination regarding financial condition. Any risk retention group must submit to an examination by the superintendent to determine its financial condition if the superintendent of the jurisdiction in which the group is chartered and licensed has not performed a timely examination or does not initiate an examination within 90 days after a request by the superintendent. Any such examination shall be coordinated to avoid unjustified repetition and conducted in an expeditious manner and in accordance with the National Association of Insurance Commissioner's Examiner Handbook, as applicable.
[PL 1987, c. 481, §3 (NEW).]

6. Notice to purchasers. Any policy issued by a risk retention group shall contain in 10 point type on the front page and the declaration page, the following notice:

"NOTICE

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

[PL 1987, c. 481, §3 (NEW).]

7. Prohibited acts regarding solicitation or sale. The following acts by a risk retention group are prohibited:

A. The solicitation or sale of insurance by a risk retention group to any person who is not eligible for membership in those groups; and [PL 1987, c. 481, §3 (NEW).]

B. The solicitation or sale of insurance by, or operation of, a risk retention group that is in a hazardous financial condition or is financially impaired. [PL 1987, c. 481, §3 (NEW).]
[PL 1987, c. 481, §3 (NEW).]

8. Prohibition on ownership by an insurance company. No risk retention group shall be allowed to do business in this State if an insurance company is directly or indirectly a member or owner of that risk retention group, other than in the case of a risk retention group, all of whose members are insurance companies.
[PL 1987, c. 481, §3 (NEW).]

9. Prohibited coverage. No risk retention group may offer insurance policy coverage prohibited by the laws of this State or by the Risk Retention Amendments of 1986.
[PL 1987, c. 481, §3 (NEW).]

10. Delinquency proceedings. A risk retention group not chartered in this State and doing business in this State must comply with a lawful order issued in a voluntary dissolution proceeding or in a delinquency proceeding commenced by a state insurance superintendent if there has been a finding of financial impairment after an examination under subsection 5.
[PL 1987, c. 481, §3 (NEW).]

SECTION HISTORY

PL 1987, c. 481, §3 (NEW). PL 1997, c. 592, §73 (AMD). PL 2013, c. 238, Pt. E, §3 (AMD).

§6096. Compulsory associations

1. Financial contribution. No risk retention group may be required or permitted to join or contribute financially to any insurance insolvency guaranty fund or similar mechanism in this State, nor may any risk retention group or its insureds or claimants against its insureds, receive any benefit from any such fund for claims arising under the insurance policies issued by the risk retention group. [PL 1987, c. 481, §3 (NEW).]

2. Insurer not authorized. When a purchasing group obtains insurance covering its members' risks from an insurer not authorized in this State or a risk retention group, these risks, wherever resident or located, shall not be covered by any insurance guaranty fund or similar mechanism in this State. [PL 1987, c. 481, §3 (NEW).]

3. Authorized insurer. When a purchasing group obtains insurance covering its members' risks from an insurer authorized in this State, only risks resident or located in this State shall be covered by the Maine Insurance Guaranty Association subject to chapter 57, subchapter III. [PL 1987, c. 481, §3 (NEW).]

SECTION HISTORY

PL 1987, c. 481, §3 (NEW).

§6097. Purchasing groups; exemption from certain laws relating to the group purchase of insurance

Any purchasing group meeting the criteria established under the provisions of the federal Liability Risk Retention Amendments of 1986 is exempt from any law of this State relating to the creation of groups for the purchase of insurance, prohibition of group purchasing or any law that discriminates against a purchasing group or its members. In addition, an insurer is exempt from any law of this State that prohibits providing, or offering to provide, to a purchasing group or its members advantages based on their loss and expense experience not afforded to other persons with respect to rates, policy forms, coverages or other matters. A purchasing group and any insurer that provides coverage to a purchasing group with Maine members are subject to all other applicable laws of this State, including, but not limited to, chapters 25, 27 and 39. [RR 1991, c. 2, §93 (COR).]

SECTION HISTORY

PL 1987, c. 481, §3 (NEW). PL 1989, c. 724, §1 (AMD). RR 1991, c. 2, §93 (COR).

§6098. Notice and registration requirements of purchasing groups

1. Notice. A purchasing group that intends to do business in this State shall, prior to doing business, pay the appropriate fee at the rate specified in section 601 and furnish notice to the superintendent to:

A. Identify the state in which the group is domiciled; [PL 1987, c. 481, §3 (NEW).]

B. Specify the lines and classifications of liability insurance that the purchasing group intends to purchase; [PL 1993, c. 221, §30 (AMD).]

C. Identify the insurance company from which the group intends to purchase its insurance and the domicile of that company; [PL 1987, c. 481, §3 (NEW).]

D. Specify the method by which, and the person or persons, if any, through whom insurance will be offered to its members whose risks are resident or located in this State; [PL 1987, c. 481, §3 (NEW).]

E. Identify the principal place of business of the group; and [PL 1987, c. 481, §3 (NEW).]

F. Provide such other information as may be required by the superintendent to verify that the purchasing group is qualified under section 6093, subsection 11 to determine where the purchasing group is located and to determine appropriate tax treatment. [PL 1993, c. 313, §37 (AMD).]

[PL 1993, c. 313, §37 (AMD).]

2. Registration. The purchasing group shall register with the superintendent and designate the superintendent as its agent solely for the purpose of receiving service of legal documents or process, except that the requirements do not apply in the case of a purchasing group:

A. That in any state of the United States:

(1) Was domiciled before April 2, 1986; and

(2) Is domiciled on and after October 27, 1986; [PL 1997, c. 592, §74 (AMD).]

B. That:

(1) Before October 27, 1986, purchased insurance from an insurance carrier licensed in any state; and

(2) Since October 27, 1986, purchased its insurance from an insurance carrier licensed in any state; [PL 1997, c. 592, §74 (AMD).]

C. That was a purchasing group under the requirements of the Product Liability Retention Act of 1981 before October 27, 1986; and [PL 1997, c. 592, §74 (AMD).]

D. That does not purchase insurance that was not authorized for purposes of an exemption under that Act, as in effect before October 27, 1986. That designation shall be subject to section 421. [PL 1997, c. 592, §74 (AMD).]

[PL 2013, c. 238, Pt. E, §4 (AMD).]

3. Application of law. Any purchasing group which was doing business in this State prior to the enactment of this Act shall within 30 days after the effective date of this Act furnish notice to the superintendent pursuant to the requirement of subsection 1 and shall comply with the requirements of subsection 2.

[PL 1987, c. 481, §3 (NEW).]

4. Notice of change. A purchasing group that intends to do business or is doing business in this State shall notify the superintendent within 10 days of any subsequent changes in any information or other items provided pursuant to this section.

[PL 1993, c. 313, §38 (AMD).]

SECTION HISTORY

PL 1987, c. 481, §3 (NEW). PL 1993, c. 221, §30 (AMD). PL 1993, c. 313, §§37,38 (AMD). PL 1997, c. 592, §74 (AMD). PL 2013, c. 238, Pt. E, §4 (AMD).

§6099. Restrictions on insurance purchased by purchasing groups

1. Purchase from risk retention group; insurer; licensed agent or broker. A purchasing group may purchase insurance from a risk retention group that is chartered in a state or, in the case of product liability or completed operations liability coverage, that qualifies under section 6093, subsection 13, paragraph C, subparagraph (2); from an insurer admitted in this State; or from a licensed agent or broker acting pursuant to the surplus lines laws and regulations of this State.

[PL 1989, c. 724, §2 (AMD).]

2. Notice of nonprotected risk. A purchasing group which obtains liability insurance from an insurer not authorized in this State or a risk retention group shall inform each of the members of the purchasing group which have a risk resident or located in this State that such risk is not protected by an

insurance insolvency guaranty fund in this State, and that the risk retention group or the insurer may not be subject to all insurance laws and regulations of this State.
[PL 1987, c. 481, §3 (NEW).]

3. Prohibition on retention of risk. A purchasing group may not purchase insurance providing for a deductible or self-insured retention applicable to the group as a whole; however coverage may provide for a deductible or self-insured retention applicable to individual members.
[PL 1995, c. 540, §1 (AMD).]

SECTION HISTORY

PL 1987, c. 481, §3 (NEW). PL 1989, c. 724, §2 (AMD). PL 1993, c. 313, §39 (AMD). PL 1995, c. 540, §1 (AMD).

§6100. Administrative and procedural authority regarding risk retention groups and purchasing groups

The superintendent is authorized to make use of any of the powers established under the Maine Insurance Code as long as those powers are not specifically preempted by the Product Liability Risk Retention Act of 1981, as amended by the Risk Retention Amendments of 1986. This includes, but is not limited to, the superintendent's administrative authority to investigate, issue subpoenas, conduct depositions and hearings, issue orders and impose penalties. With regard to any investigation, administrative proceedings or litigation, the superintendent can rely on the procedural laws and rules of the State. The superintendent's injunctive authority in regard to risk retention groups is restricted by the requirement that any injunction be issued by a court of competent jurisdiction. [PL 1987, c. 481, §3 (NEW).]

SECTION HISTORY

PL 1987, c. 481, §3 (NEW).

§6101. Penalties

A risk retention group which violates any provision of this Act will be subject to fines and penalties applicable to licensed insurers generally, including revocation of its license or the right to do business in this State. [PL 1987, c. 481, §3 (NEW).]

SECTION HISTORY

PL 1987, c. 481, §3 (NEW).

§6102. Duty of agents or brokers to obtain license

Any person acting, or offering to act, as an agent or broker for a risk retention group or purchasing group, which solicits members, sells insurance coverage, purchases coverage for its members located within the State or otherwise does business in this State shall, before commencing any such activity, obtain an appropriate license from the superintendent. [PL 1987, c. 481, §3 (NEW).]

SECTION HISTORY

PL 1987, c. 481, §3 (NEW).

§6103. Binding effects of orders issued in the United States District Court

An order issued by any district court of the United States enjoining a risk retention group from soliciting or selling insurance or operating in any state, or in all states or in any territory or possession of the United States, upon a finding that such a group is in a hazardous financial condition, shall be enforceable in the courts of this State. [PL 1987, c. 481, §3 (NEW).]

SECTION HISTORY

PL 1987, c. 481, §3 (NEW).

§6104. Rules

The superintendent may establish and from time to time amend such rules relating to risk retention groups as may be necessary or desirable to carry out the provisions of this Act. [PL 1987, c. 481, §3 (NEW).]

SECTION HISTORY

PL 1987, c. 481, §3 (NEW).

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