

1 **State of Arkansas**
2 **80th General Assembly**
3 **Regular Session, 1995**

A Bill

ACT 623 OF 1995
HOUSE BILL 1723

4 **By: Representatives Beatty, Maddox, J. Miller, Capps, Cunningham, Newman, M. Wilson,**
5 **Purdom, Allen, and Young**

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For An Act To Be Entitled

9 "AN ACT TO PROVIDE FOR RISK RETENTION GROUPS AND
10 PURCHASING GROUPS AND TO REPEAL THE CURRENT LAWS ON THOSE
11 SUBJECTS IN THE ARKANSAS CODE SO THAT THE ARKANSAS
12 INSURANCE COMMISSIONER CAN BETTER REGULATE THE FINANCIAL
13 SOLVENCY OF RISK RETENTION GROUPS AND PURCHASING GROUPS;
14 AND FOR OTHER PURPOSES."

15

Subtitle

16
17 "AN ACT TO PROVIDE FOR RISK RETENTION
18 GROUPS AND PURCHASING GROUPS"

19

20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

21

22 SECTION 1. Title 23 of Chapter 94 of the Arkansas Code is hereby
23 amended by adding the following new sections.

24 "23-94-101. Title.

25 This act may be cited as the Risk Retention and Purchasing Groups Act.

26 23-94-102. Purpose.

27 The purpose of this act is to regulate the formation and operation of
28 risk retention groups and purchasing groups in this state formed pursuant to
29 the provisions of the Federal Liability Risk Retention Act of 1986 (RRA 1986),
30 to the extent permitted by such law.

31 23-94-103. Definitions.

32 As used in this act:

33 (1) Commissioner means the insurance commissioner of this state or the
34 commissioner, director or superintendent of insurance in any other state;

35 (2) Completed operations liability means liability arising out of the
36 installation, maintenance, or repair of any product at a site which is not

1 owned or controlled by

2 (A) any person who performs that work; or

3 (B) any person who hires an independent contractor to perform that
4 work; but shall include liability for activities which are completed or
5 abandoned before the date of the occurrence giving rise to the liability;

6 (3) Domicile, for purposes of determining the state in which a
7 purchasing group is domiciled, means:

8 (A) for a corporation, the state in which the purchasing group is
9 incorporated; and

10 (B) for an unincorporated entity, the state of its principal place
11 of business;

12 (4) Hazardous financial condition means that, based on its present or
13 reasonably anticipated financial condition, a risk retention group, although
14 not yet financially impaired or insolvent, is unlikely to be able

15 (A) to meet obligations to policyholders with respect to known
16 claims and reasonably anticipated claims; or

17 (B) to pay other obligations in the normal course of business;

18 (5) Insurance means primary insurance, excess insurance, reinsurance,
19 surplus lines insurance, and any other arrangement for shifting and
20 distributing risk which is determined to be insurance under the laws of this
21 state;

22 (6) Liability

23 (A) means legal liability for damages, including costs of defense,
24 legal costs and fees, and other claims expenses, because of injuries to other
25 persons, damage to their property, or other damage or loss to such other
26 persons resulting from or arising out of

27 (i) any business, whether profit or nonprofit, trade,
28 product, services, including professional services, premises, or operations;
29 or

30 (ii) any activity of any state or local government, or any
31 agency or political subdivision thereof; and

32 (B) does not include personal risk liability and an employer's
33 liability with respect to its employees other than legal liability under the
34 Federal Employers' Liability Act, 45 U.S.C. 51 et seq.;

35 (7) Personal risk liability means liability for damages because of

1 injury to any person, damage to property, or other loss or damage resulting
2 from any personal, familial, or household responsibilities or activities,
3 rather than from responsibilities or activities referred to in subdivision (6)
4 of this section;

5 (8) Plan of operation or feasibility study means an analysis which
6 presents the expected activities and results of a risk retention group
7 including, at a minimum;

8 (A) information sufficient to verify that its members are engaged
9 in businesses or activities similar or related with respect to the liability
10 to which such members are exposed by virtue of any related, similar or common
11 business, trade, product, services, premises or operations;

12 (B) for each state in which it intends to operate, the coverages,
13 deductibles, coverage limits, rates, and rating classification systems for
14 each line of insurance the group intends to offer;

15 (C) historical and expected loss experience of the proposed
16 members and national experience of similar exposures to the extent that this
17 experience is reasonably available;

18 (D) pro forma financial statements and projections;

19 (E) appropriate opinions by a qualified, independent casualty
20 actuary, including a determination of minimum premium or participation levels
21 required to commence operations and to prevent a hazardous financial
22 condition;

23 (F) identification of management, underwriting and claims
24 procedures, marketing methods, managerial oversight methods, investment
25 policies and reinsurance agreements;

26 (G) identification of each state in which the risk retention group
27 has obtained, or sought to obtain, a charter and license, and a description of
28 its status in each such state; and

29 (H) such other matters as may be prescribed by the commissioner of
30 the state in which the risk retention group is chartered for liability
31 insurance companies authorized by the insurance laws of that state;

32 (9) Product liability means liability for damages because of any
33 personal injury, death, emotional harm, consequential economic damage, or
34 property damage, including damages resulting from the loss of use of property,
35 arising out of the manufacture, design, importation, distribution, packaging,

1 labeling, lease, or sale of a product, but does not include the liability of
2 any person for those damages if the product involved was in the possession of
3 such a person when the incident giving rise to the claim occurred;

4 (10) Purchasing group means any group which:

5 (A) has as one of its purposes the purchase of liability insurance
6 on a group basis;

7 (B) purchases such insurance only for its group members and only
8 to cover their similar or related liability exposure, as described in
9 subdivision (10) (C) of this section;

10 (C) is composed of members whose businesses or activities are
11 similar or related with respect to the liability to which members are exposed
12 by virtue of any related, similar, or common business, trade, product,
13 services, premises, or operations; and

14 (D) is domiciled in any state;

15 (11) Risk retention group means any corporation or other limited
16 liability association:

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

19 (B) which is organized for the primary purpose of conducting the
20 activity described under subdivision (11) (A) of this section;

21 (C) which

22 (i) is chartered and licensed as a liability insurance
23 company and authorized to engage in the business of insurance under the laws
24 of any state; or

25 (ii) before January 1, 1985 was chartered or licensed and
26 authorized to engage in the business of insurance under the laws of Bermuda or
27 the Cayman Islands and, before such date, had certified to the insurance
28 commissioner of at least one state that it satisfied the capitalization
29 requirements of such state, except that any such group shall be considered to
30 be a risk retention group only if it has been engaged in business continuously
31 since that date and only for the purpose of continuing to provide insurance to
32 cover product liability or completed operations liability, as such terms were
33 defined in the Product Liability Risk Retention Act of 1981 before the date of
34 the enactment of the Liability Risk Retention Act of 1986;

35 (D) which does not exclude any person from membership in the group

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

3 (E) which

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

7 (ii) has as its sole owner an organization which has as

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

10 (b) its owners only persons who comprise the
11 membership of the risk retention group and who are provided insurance by such
12 group;

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

17 (G) whose activities do not include the provision of insurance
18 other than

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

21 (ii) reinsurance with respect to the liability of any other
22 risk retention group, or any members of such other group, which is engaged in
23 businesses or activities so that the group or member meets the requirement
24 described in subdivision (11)(F) of this section from membership in the risk
25 retention group which provides such reinsurance; and

26 (H) the name of which includes the phrase Risk Retention Group;

27 (12) State means any state of the United States or the District of
28 Columbia.

29 (13) Department means the Arkansas Insurance Department.

30 23-94-104. Domestic Risk Retention Groups.

31 (1) (A) To be organized as a risk retention group in this state, the
32 group must be organized and licensed to write only casualty insurance pursuant
33 to this act and, except as provided elsewhere in this act, must comply with
34 all of the laws, rules, regulations and requirements applicable to such
35 insurers licensed in this state and with §23-94-105 to the extent such

1 requirements are not a limitation on laws, rules, regulations or requirements
2 of this state. The commissioner shall issue a certificate of registration to
3 a risk retention group organized, formed, or domiciled under the laws of this
4 state when the commissioner is satisfied that the applicant group has fully
5 complied with the provisions of this act. No risk retention group organized,
6 formed, or domiciled under the laws of this state shall transact business in
7 this state unless so authorized by a subsisting certificate of registration
8 issued by the commissioner.

9 (B) Notwithstanding any other provision to the contrary, all risk
10 retention groups domiciled in this state shall file, annually on or before
11 March 1, or within any extension of time therefor which the commissioner for
12 good cause may have granted, with the Department and the National Association
13 of Insurance Commissioners (NAIC), an annual statement in a form prescribed by
14 the NAIC and in diskette form, if required by the commissioner and completed
15 in accordance with its instructions and the NAIC Accounting Practices and
16 Procedures Manual.

17 (2) Before it may offer insurance in any state, each risk retention
18 group shall also submit for approval to the commissioner of this state a plan
19 of operation or feasibility study. The risk retention group shall submit an
20 appropriate revision in the event of any subsequent material change in any
21 item of the plan of operation or feasibility study, within ten (10) days of
22 any such change. The group shall not offer any additional kinds of casualty
23 insurance, in this state or in any other state, until a revision of such plan
24 or study is approved by the commissioner.

25 (3) At the time of filing its application for a certificate of
26 registration, the risk retention group shall provide to the commissioner in
27 summary form the following information: the identity of the initial members
28 of the group, the identity of those individuals who organized the group or who
29 will provide administrative services or otherwise influence or control the
30 activities of the group, the amount and nature of initial capitalization, the
31 coverages to be afforded, and the states in which the group intends to
32 operate. Upon receipt of this information, the commissioner shall forward
33 such information to the National Association of Insurance Commissioners.
34 Providing notification to the National Association of Insurance Commissioners
35 is in addition to and shall not be sufficient to satisfy the requirements of

1 §23-94-105 or any other sections of this act.

2 23-94-105. Foreign Risk Retention Groups.

3 Risk retention groups chartered and licensed in states other than this
4 state and seeking to do business as a risk retention group in this state must
5 apply for and obtain a certificate of registration from the commissioner using
6 the forms prescribed by the Department. The commissioner shall issue a
7 certificate of registration to risk retention groups chartered and licensed
8 under the laws of other states when the commissioner is satisfied that the
9 applicant groups have complied with the provisions of this act. No risk
10 retention group chartered and licensed in states other than this state shall
11 transact business in this state unless so authorized by a subsisting
12 certificate of registration issued by the commissioner. Each such group shall
13 comply with the laws of this state as follows:

14 (1) Notice of Operations and Designation of Commissioner as Agent.

15 (A) Before offering insurance in this state, a risk retention
16 group shall submit to the commissioner on a form prescribed by the NAIC:

17 (i) a statement identifying the state or states in which the
18 risk retention group is chartered and licensed as a liability insurance
19 company, charter date, its principal place of business, and such other
20 information, including information on its membership, as the commissioner may
21 require to verify that the risk retention group is qualified under
22 §23-94-103(11);

23 (ii) a copy of its plan of operation or feasibility study
24 and revisions of such plan or study submitted to the state in which the risk
25 retention group is chartered and licensed; provided, however, that the
26 provision relating to the submission of a plan of operation or feasibility
27 study shall not apply with respect to any line or classification of liability
28 insurance which:

29 (a) was defined in the Product Liability Risk
30 Retention Act of 1981 before October 27, 1986; and

31 (b) was offered before that date by any risk retention
32 group which had been chartered and operating for not less than three (3) years
33 before that date; and

34 (B) the risk retention group shall submit a copy of any revision
35 to its plan of operation or feasibility study required pursuant to

1 §23-94-104(2) at the same time that such revision is submitted to the
2 commissioner of its chartering state.

3 (C) the risk retention group shall submit a statement of
4 registration, for which a filing fee shall be determined by the commissioner,
5 which designates the commissioner as its agent for the purpose of receiving
6 service of legal documents or process.

7 (2) Financial Condition. Any risk retention group doing business in
8 this state shall submit to the commissioner annually on or before March 1, or
9 within any extension of time therefor which the commissioner for good cause
10 may have granted, an annual statement in a form prescribed by the NAIC and
11 completed in accordance with the instructions and the NAIC Accounting
12 Practices and Procedures Manual. Additional information that must be
13 submitted to the commissioner by the risk retention group doing business in
14 this state shall include all of the following:

15 (A) a copy of the group's financial statement submitted to the
16 state in which the risk retention group is chartered and licensed which shall
17 be certified by an independent public accountant and contain a statement of
18 opinion on loss and loss adjustment expense reserves made by a member of the
19 American Academy of Actuaries or a qualified loss reserve specialist under
20 criteria established by the National Association of Insurance Commissioners;

21 (B) a copy of each examination of the risk retention group as
22 certified by the commissioner or public official conducting the examination;

23 (C) upon request by the commissioner, a copy of any information or
24 document pertaining to any outside audit performed with respect to the risk
25 retention group; and

26 (D) such information as may be required to verify its continuing
27 qualification as a risk retention group under §23-94-103(11).

28 (3) Agent and Broker Records.

29 To the extent that insurance agents or brokers are utilized pursuant to
30 §23-94-112, such agent or broker shall keep a complete and separate record of
31 all policies procured from each such risk retention group, which record shall
32 be open to examination by the commissioner. These records shall, for each
33 policy and each kind of insurance provided thereunder, include the following:

34 (A) the limit of liability;

35 (B) the time period covered;

1 group to any person who is not eligible for membership in such group; and

2 (B) The solicitation or sale of insurance by, or operation of, a
3 risk retention group that is in hazardous financial condition or financially
4 impaired.

5 (8) Prohibition on Ownership by an Insurance Company. No risk
6 retention group shall be allowed to do business in this state if an insurance
7 company is directly or indirectly a member or owner of such risk retention
8 group, other than in the case of a risk retention group all of whose members
9 are insurance companies.

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

14 (10) Delinquency Proceedings. A risk retention group not chartered in
15 this state and doing business in this state shall comply with a lawful order
16 issued in a voluntary dissolution proceeding or in a delinquency proceeding
17 commenced by a state insurance commissioner if there has been a finding of
18 financial impairment after an examination under subdivision (5) of this
19 section.

20 (11) Penalties. A risk retention group that violates any provision of
21 this act will be subject to fines and penalties, including revocation of its
22 right to do business in this state, applicable to licensed insurers generally.

23 (12) Operation Prior to Enactment of this Act. In addition to
24 complying with the requirements of this section, any risk retention group
25 operating in this state prior to effective date of this act shall, within
26 thirty (30) days after the effective date of this act, comply with the
27 provisions of subdivision (1)(A) of this section.

28 23-94-106. Compulsory Associations.

29 (a) No risk retention group shall be required or permitted to join or
30 contribute financially to any insurance insolvency guaranty fund, or similar
31 mechanism, in this state, nor shall any risk retention group, or its insureds
32 or claimants against its insureds, receive any benefit from any such fund for
33 claims arising under the insurance policies issued by a risk retention group.

34 (b) When a purchasing group obtains insurance covering its members'
35 risks from an insurer not authorized in this state or a risk retention group,

1 no such risks, wherever resident or located, shall be covered by any insurance
2 guaranty fund or similar mechanism in this state.

3 (c) When a purchasing group obtains insurance covering its members'
4 risks from an authorized insurer, only risks resident or located in this state
5 shall be covered by the appropriate state guaranty fund.

6 23-94-107. Purchasing Groups - Exemption from Certain Laws.

7 A purchasing group and its insurer or insurers shall be subject to all
8 applicable laws of this state, except that a purchasing group and its insurer
9 or insurers shall be exempt, in regard to liability insurance for the
10 purchasing group, from any law that would:

11 (1) prohibit the establishment of a purchasing group;

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

16 (3) prohibit a purchasing group or its members from purchasing insurance
17 on a group basis described in subdivision (2) of this section;

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

22 (5) require that a purchasing group must have a minimum number of
23 members, common ownership or affiliation, or certain legal form;

24 (6) require that a certain percentage of a purchasing group must obtain
25 insurance on a group basis;

26 (7) otherwise discriminate against a purchasing group or any of its
27 members; or

28 (8) require that any insurance policy issued to a purchasing group or
29 any of its members be countersigned by an insurance agent or broker residing
30 in this state.

31 23-94-108. Notice and Registration Requirements of Purchasing Groups.

32 (a) A purchasing group which intends to do business in this state must
33 obtain a certificate of registration from the commissioner. The commissioner
34 shall issue a certificate of registration to a purchasing group organized and
35 formed under the laws of any state when the commissioner is satisfied that the

1 applicant group has fully complied with the provisions of this act. Each
2 purchasing group which intends to do business in this state shall, prior to
3 doing business, furnish notice to the commissioner which shall, on forms
4 prescribed by the NAIC:

5 (1) identify the state in which the group is domiciled;

6 (2) identify all other states in which the group intends to
7 do business;

8 (3) specify the lines and classifications of casualty
9 insurance which the purchasing group intends to purchase;

10 (4) identify the insurance company or companies from which
11 the group intends to purchase its insurance and the domicile of such company;

12 (5) specify the method by which, and the person or persons,
13 if any, through whom insurance will be offered to its members whose risks are
14 resident or located in this state;

15 (6) identify the principal place of business of the group;
16 and

17 (7) provide such other information as may be required by the
18 commissioner to verify that the purchasing group is qualified for a
19 certificate of registration.

20 (b) A purchasing group shall, within ten (10) days, notify the
21 commissioner of any changes in any of the items set forth in subsection (a) of
22 this section.

23 (c) The purchasing group shall register with and designate the
24 commissioner as its agent solely for the purpose of receiving service of legal
25 documents or process, for which a filing fee shall be determined by the
26 commissioner, except that such requirements shall not apply in the case of a
27 purchasing group which only purchases insurance that was authorized under the
28 federal Products Liability Risk Retention Act of 1981, and:

29 (1) which in any state of the United States

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

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

32 (2) which

33 (A) before October 27, 1986 purchased insurance from an
34 insurance carrier licensed in any state; and

35 (B) since October 27, 1986 purchased its insurance from an

1 insurance carrier licensed in any state; or

2 (3) which was a purchasing group under the requirements of the
3 Product Liability Risk Retention Act of 1981 before October 27, 1986.

4 (d) Each purchasing group that is required to give notice pursuant to
5 subsection (a) of this section shall also furnish such information as may be
6 required by the commissioner to:

7 (1) verify that the entity qualifies as a purchasing group;

8 (2) determine where the purchasing group is located; and

9 (3) determine appropriate tax treatment.

10 (e) Any purchasing group which was doing business in this state prior
11 to the effective date of this act shall, within thirty (30) days after the
12 effective date of this act, furnish notice to the commissioner pursuant to the
13 provisions of subsection (a) of this section and furnish such information as
14 may be required pursuant to subsections (b) and (c) of this section.

15 23-94-109. Restrictions on Insurance Purchased by Purchasing Groups.

16 (a) A purchasing group may not purchase insurance from a risk retention
17 group that does not hold a certificate of registration in this state or from
18 an insurer not admitted in the state in which the purchasing group is located,
19 unless the purchase is effected through a licensed agent or broker acting
20 pursuant to the surplus line laws and regulations of such state.

21 (b) No purchasing group may purchase insurance providing for a
22 deductible or self-insured retention applicable to the group as a whole;
23 however, coverage may provide for a deductible or self-insured retention
24 applicable to individual members.

25 (c) Purchases of insurance by purchasing groups are subject to the same
26 standards regarding aggregate limits which are applicable to all purchases of
27 group insurance.

28 (d) A purchasing group which obtains liability insurance from an
29 insurer not admitted in this state or a risk retention group shall inform each
30 of the members of the group which have a risk resident or located in this
31 state that the risk is not protected by an insurance insolvency guaranty fund
32 in this state, and that the risk retention group or insurer may not be subject
33 to all insurance laws and regulations of this state.

34 23-94-110. Taxation.

35 (a) Each authorized risk retention group shall, on or before March 1 of

1 each year, file with the commissioner on forms prescribed by the commissioner
2 a statement for the preceding calendar year showing all premiums paid to the
3 risk retention group for risks insured within this state.

4 (b) Coincident with the filing of the report, each authorized risk
5 retention group shall submit to the State Treasurer through the commissioner,
6 as a tax imposed for the privilege of transacting business as a risk retention
7 group within this state, a tax of four percent (4%) on all premiums paid for
8 coverages within this state to the risk retention group within the preceding
9 calendar year as shown by the annual statement filed with the commissioner.

10 (c) Agents or brokers shall report in an annual statement and pay the
11 four percent (4%) tax on or before March 1 of each year for the premiums for
12 risks which they have placed within the preceding calendar year with or on
13 behalf of a risk retention group not authorized to do business in this state
14 by a subsisting certificate of registration issued by the commissioner.

15 (d) Any risk retention group, agent, or broker who fails to file the
16 annual statement or fails to remit the tax as provided by law on March 1 when
17 the tax is due shall be liable for a fine of one hundred dollars (\$100) for
18 each day of delinquency commencing with March 1. However, for good cause
19 shown, the commissioner, after a written request, may grant a reasonable
20 extension of time within which the statement may be filed and the tax paid.
21 The tax may be collected by distraint, or the tax and fine may be covered by
22 an action instituted by the commissioner in any court of competent
23 jurisdiction. The commissioner shall pay to the State Treasurer any fine so
24 collected.

25 23-94-111. License Fees.

26 The provisions as to fees for obtaining and continuing licenses for
27 insurers, agents, and brokers under §23-61-401 shall be applicable to risk
28 retention groups, purchasing groups, risk retention group agents and
29 purchasing group brokers, resident surplus line brokers, and non-resident
30 surplus line purchasing group brokers under the provisions of this chapter and
31 §23-65-301 et seq., except as they conflict with the provisions of the Federal
32 Liability Risk Retention Act of 1986.

33 23-94-112. Administrative and Procedural Authority Regarding Risk
34 Retention Groups and Purchasing Groups.

35 The commissioner is authorized to make use of any of the powers

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

10 23-94-113. Duty of Agents or Brokers to Obtain License.

11 (a) Risk retention group agents. Any person acting, or offering to
12 act, as an agent or broker for a registered risk retention group which
13 solicits members, sells insurance coverage, or otherwise does business in this
14 state shall, before commencing any such activity, obtain a resident or
15 nonresident risk retention group agent license from the commissioner upon
16 completion of the licensing provisions as to resident and nonresident agents
17 or brokers under §23-64-101 et seq. and §23-64-201 et seq., except as they
18 conflict with the provisions of the Federal Liability Risk Retention Act of
19 1986,

20 (b) Purchasing group brokers.

21 (1) Any person acting, or offering to act, as an agent or broker
22 for a registered purchasing group which solicits members, sells insurance
23 coverage, purchases coverage for its members located within the state, or
24 otherwise doing business in this state shall, before commencing any such
25 activity, obtain a resident or nonresident purchasing group broker license
26 from the commissioner upon completion of the licensing provisions as to
27 resident and nonresident agents or brokers under §23-64-101 et seq. and
28 §23-64-201 et seq., except as they conflict with the provisions of the Federal
29 Liability Risk Retention Act of 1986, before securing the purchasing group's
30 coverage with an authorized insurer or a registered risk retention group.
31 This requirement shall not be applicable to property and casualty agents or
32 brokers duly licensed by this state as to the authorized insurer or risk
33 retention group issuing the purchasing group's coverage, so long as these
34 licenses comply with other provisions of this chapter.

35 (2) Any person acting, or offering to act, as an agent or broker

1 for a purchasing group registered in Arkansas and procuring insurance from an
2 approved non-admitted surplus line insurer shall either:

3 (A) first obtain a property and casualty agent or broker's
4 license or purchasing group broker's license from this state, prior to placing
5 the group's coverage through a surplus line broker duly licensed by the state
6 of Arkansas, or

7 (B) first obtain a resident Arkansas surplus line broker's
8 license, or a nonresident Arkansas surplus line broker's license restricted to
9 registered purchasing groups only, prior to placing the group's coverage with
10 the surplus line insurer.

11 (3) The provisions of this section shall be in conformity with
12 the provisions of this chapter, §23-64-101 et seq., §23-64-201 et seq., and
13 the surplus line laws of this state, §23-65-301 et seq., except as they
14 conflict with the provisions of the Federal Liability Risk Retention Act of
15 1986.

16 23-94-114. Binding Effect of Orders Issued in U.S. District Court.

17 An order issued by any district court of the United States enjoining a
18 risk retention group from soliciting or selling insurance, or operating in any
19 state, or in all states or in any territory or possession of the United
20 States, upon a finding that such a group is in hazardous financial or
21 financially impaired condition shall be enforceable in the courts of the
22 state.

23 23-94-115. Rules and Regulations.

24 The commissioner may establish and from time to time amend such rules
25 relating to risk retention groups as may be necessary or desirable to carry
26 out the provisions of this act."

27

28 SECTION 2. Repealer.

29 1. Arkansas Code §§ 23-94-101 through 23-94-108 are repealed.

30 2. Arkansas Code §§ 23-94-201 through 23-94-209 are repealed.

31 3. Arkansas Code §§ 23-94-301 through 23-94-303 are repealed.

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33 SECTION 3. All provisions of this Act of a general and permanent nature
34 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
35 Revision Commission shall incorporate the same in the Code.

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SECTION 4. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or application of the Act which can be given effect without the invalid provision or application, and to this end the provisions of the Act are declared to be severable.

SECTION 5. All laws and parts of laws in conflict with this Act are hereby repealed.

SECTION 6. EMERGENCY. It is hereby found and determined by the General Assembly of the State of Arkansas that the present insurance laws are not sufficient to protect the Arkansas insurance buying public. It is determined that it is in the best interests of the State of Arkansas that the laws in this act be adopted immediately so that the Arkansas Insurance Department can better regulate the insurance industry. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.

APPROVED: 3-14-95

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