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2 80th General Assembly
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A Bill

HOUSE BILL 1723

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

6
7

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
26 Act.

27 23-94-102. Purpose.

28 The purpose of this act is to regulate the formation and operation of
29 risk retention groups and purchasing groups in this state formed pursuant to
30 the provisions of the Federal Liability Risk Retention Act of 1986 (RRA
31 1986), to the extent permitted by such law.

32 23-94-103. Definitions.

33 As used in this act:

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

1 (2) Completed operations liability means liability arising out of the
2 installation, maintenance, or repair of any product at a site which is not
3 owned or controlled by

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

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

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

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

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

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

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

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

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

24 (6) Liability

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

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

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

34 (B) does not include personal risk liability and an employer's
35 liability with respect to its employees other than legal liability under the

1 Federal Employers' Liability Act, 45 U.S.C. 51 et seq.;

2 (7) Personal risk liability means liability for damages because of
3 injury to any person, damage to property, or other loss or damage resulting
4 from any personal, familial, or household responsibilities or activities,
5 rather than from responsibilities or activities referred to in subdivision
6 (6) of this section;

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

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

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

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

20 (D) pro forma financial statements and projections;

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

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

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

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

34 (9) Product liability means liability for damages because of any
35 personal injury, death, emotional harm, consequential economic damage, or

1 property damage, including damages resulting from the loss of use of
2 property, arising out of the manufacture, design, importation, distribution,
3 packaging, labeling, lease, or sale of a product, but does not include the
4 liability of any person for those damages if the product involved was in the
5 possession of such a person when the incident giving rise to the claim
6 occurred;

7 (10) Purchasing group means any group which:

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

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

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

17 (D) is domiciled in any state;

18 (11) Risk retention group means any corporation or other limited
19 liability association:

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

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

24 (C) which

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

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

1 liability, as such terms were defined in the Product Liability Risk Retention
2 Act of 1981 before the date of the enactment of the Liability Risk Retention
3 Act of 1986;

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

7 (E) which

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

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

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

14 (b) its owners only persons who comprise the
15 membership of the risk retention group and who are provided insurance by such
16 group;

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

21 (G) whose activities do not include the provision of insurance
22 other than

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

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

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

31 (12) State means any state of the United States or the District of
32 Columbia.

33 (13) Department means the Arkansas Insurance Department.

34 23-94-104. Domestic Risk Retention Groups.

35 (1)(A) To be organized as a risk retention group in this state, the

1 group must be organized and licensed to write only casualty insurance
2 pursuant to this act and, except as provided elsewhere in this act, must
3 comply with all of the laws, rules, regulations and requirements applicable
4 to such insurers licensed in this state and with §23-94-105 to the extent
5 such requirements are not a limitation on laws, rules, regulations or
6 requirements of this state. The commissioner shall issue a certificate of
7 registration to a risk retention group organized, formed, or domiciled under
8 the laws of this state when the commissioner is satisfied that the applicant
9 group has fully complied with the provisions of this act. No risk retention
10 group organized, formed, or domiciled under the laws of this state shall
11 transact business in this state unless so authorized by a subsisting
12 certificate of registration issued by the commissioner.

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

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

29 (3) At the time of filing its application for a certificate of
30 registration, the risk retention group shall provide to the commissioner in
31 summary form the following information: the identity of the initial members
32 of the group, the identity of those individuals who organized the group or
33 who will provide administrative services or otherwise influence or control
34 the activities of the group, the amount and nature of initial capitalization,
35 the coverages to be afforded, and the states in which the group intends to

1 operate. Upon receipt of this information, the commissioner shall forward
2 such information to the National Association of Insurance Commissioners.
3 Providing notification to the National Association of Insurance Commissioners
4 is in addition to and shall not be sufficient to satisfy the requirements of
5 §23-94-105 or any other sections of this act.

6 23-94-105. Foreign Risk Retention Groups.

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

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

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

21 (i) a statement identifying the state or states in which
22 the risk retention group is chartered and licensed as a liability insurance
23 company, charter date, its principal place of business, and such other
24 information, including information on its membership, as the commissioner may
25 require to verify that the risk retention group is qualified under
26 §23-94-103(11);

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

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

35 (b) was offered before that date by any risk

1 retention group which had been chartered and operating for not less than
2 three (3) years before that date; and

3 (B) the risk retention group shall submit a copy of any revision
4 to its plan of operation or feasibility study required pursuant to
5 §23-94-104(2) at the same time that such revision is submitted to the
6 commissioner of its chartering state.

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

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

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

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

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

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

32 (3) Agent and Broker Records.

33 To the extent that insurance agents or brokers are utilized pursuant to
34 §23-94-112, such agent or broker shall keep a complete and separate record of
35 all policies procured from each such risk retention group, which record shall

1 be open to examination by the commissioner. These records shall, for each
2 policy and each kind of insurance provided thereunder, include the following:

- 3 (A) the limit of liability;
- 4 (B) the time period covered;
- 5 (C) the effective date;
- 6 (D) the name of the risk retention group which issued the policy;
- 7 (E) the gross premium charged; and
- 8 (F) the amount of return premiums, if any.

9 (4) Compliance with Trade Practices Act. Any risk retention group,
10 its agents and representatives shall comply with the provisions of the Trade
11 Practices Act, §23-66-201 et seq. and other pertinent provisions of the
12 Arkansas Insurance Code, §23-60-101 et seq. Any risk retention group, its
13 agents and representatives shall comply with the provisions of the claims
14 settlement practices in §23-66-206(9) and (10) and other pertinent provisions
15 of the Arkansas Insurance Code. Any risk retention group shall comply with
16 the provisions of Arkansas law regarding deceptive, false, or fraudulent acts
17 or practices. If the commissioner seeks an injunction regarding deceptive,
18 false or fraudulent conduct, the injunction must be from a court of competent
19 jurisdiction.

20 (5) Examination Regarding Financial Condition. Any risk retention
21 group must submit to an examination by the commissioner to determine its
22 financial condition if the commissioner of the jurisdiction in which the
23 group is chartered and licensed has not initiated an examination or does not
24 initiate an examination within sixty (60) days after a request by the
25 commissioner of this state. Any such examination shall be coordinated to
26 avoid unjustified repetition and conducted in an expeditious manner and in
27 accordance with the most current edition of the NAIC's Examiner Handbook.

28 (6) Notice to Purchasers. Every application form for insurance from a
29 risk retention group, and every policy on its front and declaration pages
30 issued by a risk retention group, shall contain in ten (10) point type the
31 following notice:

32 NOTICE

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

1 risk retention group._

2 (7) Prohibited Acts Regarding Solicitation or Sale. The following
3 acts by a risk retention group are hereby prohibited:

4 (A) The solicitation or sale of insurance by a risk retention
5 group to any person who is not eligible for membership in such group; and

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

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

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

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

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

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

33 23-94-106. Compulsory Associations.

34 (a) No risk retention group shall be required or permitted to join or
35 contribute financially to any insurance insolvency guaranty fund, or similar

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

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

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

11 23-94-107. Purchasing Groups - Exemption from Certain Laws.

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

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

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

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

23 (4) prohibit a purchasing group from obtaining insurance on a group
24 basis because the group has not been in existence for a minimum period of
25 time or because any member has not belonged to the group for a minimum period
26 of time;

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

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

31 (7) otherwise discriminate against a purchasing group or any of its
32 members; or

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

1 23-94-108. Notice and Registration Requirements of Purchasing Groups.

2 (a) A purchasing group which intends to do business in this state must
3 obtain a certificate of registration from the commissioner. The commissioner
4 shall issue a certificate of registration to a purchasing group organized and
5 formed under the laws of any state when the commissioner is satisfied that
6 the applicant group has fully complied with the provisions of this act. Each
7 purchasing group which intends to do business in this state shall, prior to
8 doing business, furnish notice to the commissioner which shall, on forms
9 prescribed by the NAIC:

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

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

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

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

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

20 (6) identify the principal place of business of the group;
21 and

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

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

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

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

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

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

2 (2) which

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

5 (B) since October 27, 1986 purchased its insurance from an
6 insurance carrier licensed in any state; or

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

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

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

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

14 (3) determine appropriate tax treatment.

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

20 23-94-109. Restrictions on Insurance Purchased by Purchasing Groups.

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

27 (b) No purchasing group may purchase insurance providing for a
28 deductible or self-insured retention applicable to the group as a whole;
29 however, coverage may provide for a deductible or self-insured retention
30 applicable to individual members.

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

34 (d) A purchasing group which obtains liability insurance from an
35 insurer not admitted in this state or a risk retention group shall inform

1 each of the members of the group which have a risk resident or located in
2 this state that the risk is not protected by an insurance insolvency guaranty
3 fund in this state, and that the risk retention group or insurer may not be
4 subject to all insurance laws and regulations of this state.

5 23-94-110. Taxation.

6 (a) Each authorized risk retention group shall, on or before March 1
7 of each year, file with the commissioner on forms prescribed by the
8 commissioner a statement for the preceding calendar year showing all premiums
9 paid to the risk retention group for risks insured within this state.

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

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

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

32 23-94-111. License Fees.

33 The provisions as to fees for obtaining and continuing licenses for
34 insurers, agents, and brokers under §23-61-401 shall be applicable to risk
35 retention groups, purchasing groups, risk retention group agents and

1 purchasing group brokers, resident surplus line brokers, and non-resident
2 surplus line purchasing group brokers under the provisions of this chapter
3 and §23-65-301 et seq., except as they conflict with the provisions of the
4 Federal Liability Risk Retention Act of 1986.

5 23-94-112. Administrative and Procedural Authority Regarding Risk
6 Retention Groups and Purchasing Groups.

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

17 23-94-113. Duty of Agents or Brokers to Obtain License.

18 (a) Risk retention group agents. Any person acting, or offering to
19 act, as an agent or broker for a registered risk retention group which
20 solicits members, sells insurance coverage, or otherwise does business in
21 this state shall, before commencing any such activity, obtain a resident or
22 nonresident risk retention group agent license from the commissioner upon
23 completion of the licensing provisions as to resident and nonresident agents
24 or brokers under §23-64-101 et seq. and §23-64-201 et seq., except as they
25 conflict with the provisions of the Federal Liability Risk Retention Act of
26 1986,

27 (b) Purchasing group brokers.

28 (1) Any person acting, or offering to act, as an agent or broker
29 for a registered purchasing group which solicits members, sells insurance
30 coverage, purchases coverage for its members located within the state, or
31 otherwise doing business in this state shall, before commencing any such
32 activity, obtain a resident or nonresident purchasing group broker license
33 from the commissioner upon completion of the licensing provisions as to
34 resident and nonresident agents or brokers under §23-64-101 et seq. and
35 §23-64-201 et seq., except as they conflict with the provisions of the

1 Federal Liability Risk Retention Act of 1986, before securing the purchasing
2 group's coverage with an authorized insurer or a registered risk retention
3 group. This requirement shall not be applicable to property and casualty
4 agents or brokers duly licensed by this state as to the authorized insurer or
5 risk retention group issuing the purchasing group's coverage, so long as
6 these licenses comply with other provisions of this chapter.

7 (2) Any person acting, or offering to act, as an agent or broker
8 for a purchasing group registered in Arkansas and procuring insurance from an
9 approved non-admitted surplus line insurer shall either:

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

14 (B) first obtain a resident Arkansas surplus line broker's
15 license, or a nonresident Arkansas surplus line broker's license restricted
16 to registered purchasing groups only, prior to placing the group's coverage
17 with the surplus line insurer.

18 (3) The provisions of this section shall be in conformity with
19 the provisions of this chapter, §23-64-101 et seq., §23-64-201 et seq., and
20 the surplus line laws of this state, §23-65-301 et seq., except as they
21 conflict with the provisions of the Federal Liability Risk Retention Act of
22 1986.

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

24 An order issued by any district court of the United States enjoining a
25 risk retention group from soliciting or selling insurance, or operating in
26 any state, or in all states or in any territory or possession of the United
27 States, upon a finding that such a group is in hazardous financial or
28 financially impaired condition shall be enforceable in the courts of the
29 state.

30 23-94-115. Rules and Regulations.

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

34

35 SECTION 2. Repealer.

- 1 1. Arkansas Code §§ 23-94-101 through 23-94-108 are repealed.
- 2 2. Arkansas Code §§ 23-94-201 through 23-94-209 are repealed.
- 3 3. Arkansas Code §§ 23-94-301 through 23-94-303 are repealed.

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

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

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

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

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