Public Law 99-563
99th Congress

An Act

Oct. 27, 1986
[S. 2129]

Risk Retention Amendments of 1986.
State and local governments.
15 USC 3901 note.

To amend the Product Liability Risk Retention Act of 1981 to include coverage of other lines of liability insurance, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Risk Retention Amendments of 1986".

SEC. 2. REFERENCES IN THE ACT.

Whenever in this Act an amendment is expressed in terms of an amendment to a section, the reference shall be deemed to be a reference to the Product Liability Risk Retention Act of 1981 (15 U.S.C. 3901 et seq.), unless otherwise provided.

SEC. 3. COVERAGE OFFERED BY RISK RETENTION GROUPS.

(a) EXPANSION OF COVERAGE.—Section 2(a) (15 U.S.C. 3901(a)) is amended—

(1) by striking paragraphs (1) and (3);

(2) by redesignating paragraph (2) as paragraph (1); and

(3) by inserting after paragraph (1), as so redesignated, the following new paragraphs:

"(2) 'liability'—

"(A) means 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—

"(i) any business (whether profit or nonprofit), trade, product, services (including professional services), premises, or operations, or

"(ii) any activity of any State or local government, or any agency or political subdivision thereof; and

"(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 (45 U.S.C. 51 et seq.);

"(3) '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 paragraphs (2)(A) and (2)(B);".

(b) DEFINITIONS.—Such section is further amended—

(1) by striking "and" at the end of paragraph (5);

(2) by striking the period at the end of paragraph (6) and inserting "; and"; and

(3) by adding at the end thereof the following new paragraph:

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"(7) 'hazardous financial condition' means that, based on its present or reasonably anticipated financial condition, a risk retention group is unlikely to be able—

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

"(B) to pay other obligations in the normal course of business.".

SEC. 4. REQUIREMENTS RELATING TO RISK RETENTION GROUPS AND PURCHASING GROUPS.

Corporations. Business and industry. Bermuda. Cayman Islands.

(a) CHARACTERISTICS OF RISK RETENTION GROUPS AND THEIR MEMBERS.—(1) Section 2(a)(4) (15 U.S.C. 3901(a)(4)) is amended by striking "taxable as a corporation, or as an insurance company, formed under the laws of any State, Bermuda, or the Cayman Islands".

(2) Subparagraph (A) of such section is amended by striking "product liability or completed operations liability risk exposure" and inserting "liability exposure".

(3) Subparagraph (C) of such section is amended to read as follows:

"(C) which—

"(i) is chartered or licensed as a liability insurance company under the laws of a State and authorized to engage in the business of insurance under the laws of such State; or

"(ii) 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 commissioner of at least one State that it satisfied the capitalization requirements of such 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 such 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 this section before the date of the enactment of the Risk Retention Act of 1986);".

(4) Such section is further amended—

(A) by striking "and" at the end of subparagraph (D); and

(B) by striking subparagraph (E) and inserting the following new subparagraphs:

"(E) which—

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

"(ii) has as its sole owner an organization which has as—

"(I) its members only persons who comprise the membership of the risk retention group; and

"(II) its owners only persons who comprise the membership of the risk retention group and who are provided insurance by such group;

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

"(G) whose activities do not include the provision of insurance other than—

"(i) liability insurance for assuming and spreading all or any portion of the similar or related liability exposure of its group members; and

"(ii) reinsurance with respect to the similar or related liability exposure of any other risk retention group (or any member of such other group) which is engaged in businesses or activities so that such group (or member) meets the requirement described in subparagraph (F) for membership in the risk retention group which provides such reinsurance; and

"(H) the name of which includes the phrase 'Risk Retention Group'.".

(b) CHARACTERISTICS OF PURCHASING GROUPS.—Section 2(a)(5) (15 U.S.C. 3901(a)(5)) is amended to read as follows:

"(5) 'purchasing group' means any group which—

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

"(B) purchases such insurance only for its group members and only to cover their similar or related liability exposure, as described in subparagraph (C);

"(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

"(D) is domiciled in any State;".

SEC. 5. CONCERNING SCOPE OF EXEMPTIONS RELATING TO RISK RETENTION GROUPS.

(a) IN GENERAL.—Section 3(b) (15 U.S.C. 3902(b)) is amended to read as follows:

Business and industry.

"(b) The exemptions specified in subsection (a) apply to laws governing the insurance business pertaining to—

"(1) liability insurance coverage provided by a risk retention group for—

"(A) such group; or

"(B) any person who is a member of such group;

"(2) the sale of liability insurance coverage for a risk retention group; and

"(3) the provision of—

"(A) insurance related services;

Securities.

"(B) management, operations, and investment activities; or

Claims.

"(C) loss control and claims administration (including loss control and claims administration services for uninsured risks retained by any member of such group);

for a risk retention group or any member of such group with respect to liability for which the group provides insurance.".

(b) PLANS OF OPERATION, FEASIBILITY STUDIES, AND FINANCIAL STATEMENTS.—Section 3 (15 U.S.C. 3902) is further amended—

(1) in subsection (a)(1)—

(A) by striking subparagraph (D) and redesignating subparagraphs (E), (F), and (G) as subparagraphs (D), (E), and (F), accordingly; and

(B) by striking all that follows after "documents or process" in subparagraph (D) (as redesignated) and inserting a semicolon; and

(2) by adding at the end of such section the following new subsection:

"(d) Each risk retention group shall submit—

"(1) to the insurance commissioner of the State in which it is chartered—

"(A) before it may offer insurance in any State, a plan of operation or a feasibility study which includes the coverages, deductibles, coverage limits, rates, and rating classification systems for each line of insurance the group intends to offer; and

"(B) revisions of such plan or study if the group intends to offer any additional lines of liability insurance;

"(2) to the insurance commissioner of each State in which it intends to do business, before it may offer insurance in such State—

"(A) a copy of such plan or study (which shall include the name of the State in which it is chartered and its principal place of business); and

"(B) a copy of any revisions to such plan or study, as provided in paragraph (1)(B) (which shall include any change in the designation of the State in which it is chartered); and

"(3) to the insurance commissioner of each State in which it is doing business, a copy of the group's annual financial statement submitted to the State in which the group is chartered as an insurance company, which statement shall be certified by an independent public accountant and contain a statement of opinion on loss and loss adjustment expense reserves made by—

"(A) a member of the American Academy of Actuaries, or

"(B) a qualified loss reserve specialist.".

(c) EXAMINATION OF FINANCIAL CONDITION.—Section 3(a)(1)(E) (as redesignated by subsection (b)) is amended— 15 USC 3902.

(1) by striking clause (i);

(2) by redesignating clause (ii) as clause (i); and

(3) by adding at the end the following new clause:

"(ii) any such examination shall be coordinated to avoid unjustified duplication and unjustified repetition;".

(d) COMPLIANCE WITH DELINQUENCY PROCEEDING ORDERS.—Section 3(a)(1)(F) (as redesignated by subsection (b)) is amended to read as follows:

"(F) comply with a lawful order issued—

"(i) in a delinquency proceeding commenced by the State insurance commissioner if there has been a finding of financial impairment under subparagraph (E); or

"(ii) in a voluntary dissolution proceeding;".

(e) ADDITIONAL STATE LAW REQUIREMENTS.—Section 3(a)(1) (15 U.S.C. 3902(a)(1)) is further amended by adding at the end the following new subparagraphs:

"(G) comply with any State law regarding deceptive, false, or fraudulent acts or practices, except that if the State seeks an injunction regarding the conduct described in this subparagraph, such injunction must be obtained from a court of competent jurisdiction; Fraud.

"(H) comply with an injunction issued by a court of competent jurisdiction, upon a petition by the State insurance commissioner alleging that the group is in hazardous financial condition or is financially impaired; and

"(I) provide the following notice, in 10-point type, in any insurance policy issued by such group:

" '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.' ".

SEC. 6. ADDITIONAL REQUIREMENTS RELATING TO PURCHASING GROUPS.

Post, p. 3175.

Section 4 (15 U.S.C. 3903) is amended by adding at the end the following new subsections:

"(d)(1) A purchasing group which intends to do business in any State shall furnish notice of such intention to the insurance commissioner of such State. Such notice—

"(A) shall identify the State in which such group is domiciled;

"(B) shall specify the lines and classifications of liability insurance which the purchasing group intends to purchase;

"(C) shall identify the insurance company from which the group intends to purchase insurance and the domicile of such company; and

"(D) shall identify the principal place of business of the group.

"(2) Such purchasing group shall notify the commissioner of any such State as to any subsequent changes in any of the items provided in such notice.

"(e) A purchasing group shall register with and designate the State insurance commissioner of each State in which it does business as its agent solely for the purpose of receiving service of legal documents or process, except that such requirement shall not apply in the case of a purchasing group—

"(1) which—

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

"(B) is domiciled on and after the date of the enactment of this Act;

in any State of the United States;

"(2) which—

"(A) before the date of the enactment of this Act, purchased insurance from an insurance carrier licensed in any State; and

"(B) since such date of enactment, purchases its insurance from an insurance carrier licensed in any State;

"(3) which was a purchasing group under the requirements of this Act before the date of the enactment of the Risk Retention Amendments of 1986; and

"(4) as long as such group does not purchase insurance that was not authorized for purposes of an exemption under this Act as in effect before the date of the enactment of the Risk Retention Amendments of 1986.

"(f) A purchasing group may not purchase insurance from a risk retention group that is not chartered in a State or from an insurer not admitted in the State in which the purchasing group is located, unless the purchase is effected through a licensed agent or broker

acting pursuant to the surplus lines laws and regulations of such State.".

SEC. 7. CONCERNING AUTHORITY OF STATES TO ENJOIN CERTAIN CONDUCT.

Section 3 (15 U.S.C. 3902), as amended by section 5(b) of this Act, is further amended by adding at the end the following new subsection:

"(e) Nothing in this section shall be construed to affect the authority of any Federal or State court to enjoin—

"(1) the solicitation or sale of insurance by a risk retention group to any person who is not eligible for membership in such group; or

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

SEC. 8. ADDITIONAL CLARIFICATION OF PERMISSIBLE STATE AUTHORITY.

(a) CLARIFICATION OF STATE AUTHORITY RESPECTING RISK RETENTION GROUPS.—Section 3 (15 U.S.C. 3902), as amended by sections 5(b) and 7 of this Act, is further amended by adding at the end the following new subsections:

"(f)(1) Subject to the provisions of subsection (a)(1)(G) (relating to injunctions) and paragraph (2), nothing in this Act shall be construed to affect the authority of any State to make use of any of its powers to enforce the laws of such State with respect to which a risk retention group is not exempt under this Act.

"(2) If a State seeks an injunction regarding the conduct described in paragraphs (1) and (2) of subsection (e), such injunction must be obtained from a Federal or State court of competent jurisdiction.

"(g) Nothing in this Act shall affect the authority of any State to bring an action in any Federal or State court.

"(h) Nothing in this Act shall be construed to affect the authority of any State to regulate or prohibit the ownership interest in a risk retention group by an insurance company in that State, other than in the case of ownership interest in a risk retention group whose members are insurance companies.".

(b) CLARIFICATION OF STATE AUTHORITY RESPECTING PURCHASING GROUPS.—Section 4 (15 U.S.C. 3903), as amended by section 6 of this Act, is further amended—

(1) in subsection (a), by inserting "and section 6" after "section"; and

(2) by adding at the end the following new subsections:

"(g) Nothing in this Act shall be construed to affect the authority of any State to make use of any of its powers to enforce the laws of such State with respect to which a purchasing group is not exempt under this Act.

"(h) Nothing in this Act shall affect the authority of any State to bring an action in any Federal or State court.".

(c) OTHER CLARIFICATION.—The Act is further amended by adding at the end the following new section:

"CLARIFICATION CONCERNING PERMISSIBLE STATE AUTHORITY

"SEC. 6. (a) Nothing in this Act shall be construed to exempt a risk retention group or purchasing group authorized under this Act from

Motor vehicles.
15 USC 3905.

the policy form or coverage requirements of any State motor vehicle no-fault or motor vehicle financial responsibility insurance law.

"(b) The exemptions provided under this Act shall apply only to the provision of liability insurance by a risk retention group or the purchase of liability insurance by a purchasing group, and nothing in this Act shall be construed to permit the provision or purchase of any other line of insurance by any such group.

"(c) The terms of any insurance policy provided by a risk retention group or purchased by a purchasing group shall not provide or be construed to provide insurance policy coverage prohibited generally by State statute or declared unlawful by the highest court of the State whose law applies to such policy.

15 USC 3902.

"(d) Subject to the provisions of section 3(a)(4) relating to discrimination, nothing in this Act shall be construed to preempt the authority of a State to specify acceptable means of demonstrating financial responsibility where the State has required a demonstration of financial responsibility as a condition for obtaining a license or permit to undertake specified activities. Such means may include or exclude insurance coverage obtained from an admitted insurance company, an excess lines company, a risk retention group, or any other source regardless of whether coverage is obtained directly from an insurance company or through a broker, agent, purchasing group, or any other person.".

SEC. 9. INJUNCTIVE POWERS OF FEDERAL COURTS.

The Act, as amended by section 8(c) of this Act, is further amended by adding at the end the following new section:

"INJUNCTIVE ORDERS ISSUED BY UNITED STATES DISTRICT COURTS

15 USC 3906.

"SEC. 7. Any district court of the United States may issue an order 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 of such court that such group is in hazardous financial condition. Such order shall be binding on such group, its officers, agents, and employees, and on any other person acting in active concert with any such officer, agent, or employee, if such other person has actual notice of such order.".

SEC. 10. OVERSIGHT OF IMPLEMENTATION; REPORT TO CONGRESS.

15 USC 3901 note.

(a) IN GENERAL.—(1) Not later than September 1, 1987, and not later than September 1, 1989, the Secretary of Commerce shall submit reports to the Congress concerning implementation of this Act.

(2) Such report shall be based on—

(A) the Secretary's consultation with State insurance commissioners, risk retention groups, purchasing groups, and other interested parties; and

(B) the Secretary's analysis of other information available to the Secretary.

(b) CONTENTS OF THE REPORT.—The report shall describe the Secretary's views concerning—

(1) the contribution of this Act toward resolution of problems relating to the unavailability and unaffordability of liability insurance;

(2) the extent to which the structure of regulation and preemption established by this Act is satisfactory;

(3) the extent to which, in the implementation of this Act, the public is protected from unsound financial practices and other commercial abuses involving risk retention groups and purchasing groups;

(4) the causes of any financial difficulties of risk retention groups and purchasing groups;

(5) the extent to which risk retention groups and purchasing groups have been discriminated against under State laws, practices, and procedures contrary to the provisions and underlying policy of this Act and the Product Liability Risk Retention Act (as amended by this Act); and

(6) such other comments and conclusions as the Secretary deems relevant to assessment of the implementation of this Act.

SEC. 11. EFFECTIVE DATE; APPLICABILITY.

(a) GENERAL RULE.—Subject to subsection (b), this Act shall take effect on the date of its enactment. 15 USC 3901 note.

(b) SPECIAL RULE REGARDING FEASIBILITY STUDY.—The provisions of section 3(d) of the Liability Risk Retention Act of 1986 (as added by section 5(b) of this Act), relating to the submission of a feasibility study, shall not apply with respect to any line or classification of liability insurance which— 15 USC 3901 note.

(1) was defined in the Product Liability Risk Retention Act of 1981 before the date of the enactment of this Act; and 15 USC 3901 note.

(2) was offered before such date of enactment by any risk retention group which has been chartered and operating for not less than 3 years before such date of enactment.

(c) RULE REGARDING POLLUTION LIABILITY.—

(1) Section 210 of the Superfund Amendments and Reauthorization Act of 1986 is amended by inserting "(a)" following "Pollution Liability Insurance" and adding at the end thereof the following: *Ante*, p. 1716.

"(b) For purposes of subsection (a) of this section, the powers and authorities of States addressed by the Risk Retention Amendments of 1986 are in addition to those of this Act.". 42 USC 9671 note.

(2) Nothing in this Act shall be construed, interpreted or applied to diminish the obligations of any person to establish or maintain evidence of financial responsibility or otherwise comply with any of the requirements of Federal environmental laws, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 and the Solid Waste Disposal Act. 15 USC 3901 note. 42 USC 9601 note. 42 USC 6901 note.

SEC. 12. TECHNICAL AND CONFORMING AMENDMENTS.

(a) IN THE SHORT TITLE.—Section 1 (15 U.S.C. 3901, note) is amended to read as follows: *Ante*, p. 3170.

"SHORT TITLE

"SECTION 1. This Act may be cited as the 'Liability Risk Retention Act of 1986'." Liability Risk Retention Act of 1986.

(b) IN SECTION 2(b).—Section 2(b) (15 U.S.C. 3901(b)) is amended by striking "product liability and product liability insurance" and inserting "liability, personal risk liability, and insurance".

(c) IN SECTION 3(a)(1)(C).—Section 3(a)(1)(C) (15 U.S.C. 3902(a)(1)(C)) is amended by striking "product liability or completed operations".

(d) IN SECTION 4(b).—Section 4(b) (15 U.S.C. 3903(b)) is amended—

(1) in paragraph (1), by striking "product liability or completed operations liability insurance, and comprehensive general liability insurance which includes either of these coverages," and inserting "liability insurance"; and

(2) in paragraph (2), by striking "product liability or completed operations insurance, and comprehensive general".

Approved October 27, 1986.

LEGISLATIVE HISTORY—S. 2129 (H.R. 5225):

HOUSE REPORTS: No. 99-865 accompanying H.R. 5225 (Comm. on Energy and Commerce).

SENATE REPORTS: No. 99-294 (Comm. on Commerce, Science, and Transportation).

CONGRESSIONAL RECORD, Vol. 132 (1986):

July 17, considered and passed Senate.

Sept. 23, H.R. 5225 considered and passed House; proceedings vacated and S. 2129, amended, passed in lieu.

Oct. 6, Senate concurred in House amendments with an amendment.

Oct. 9, House concurred in Senate amendment.