

(B) since September 25, 1981, purchases its insurance from an insurance carrier licensed in any State;

(3) which was a purchasing group under the requirements of this chapter before October 27, 1986; and

(4) as long as such group does not purchase insurance that was not authorized for purposes of an exemption under this chapter as in effect before October 27, 1986.

**(f) Purchases of insurance through licensed agents or brokers acting pursuant to surplus lines laws**

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.

**(g) State powers to enforce State laws**

Nothing in this chapter 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 chapter.

**(h) States' authority to sue**

Nothing in this chapter shall affect the authority of any State to bring an action in any Federal or State court.

(Pub. L. 97-45, § 4, Sept. 25, 1981, 95 Stat. 951; Pub. L. 99-563, §§ 6, 8(b), 12(d), Oct. 27, 1986, 100 Stat. 3174, 3175, 3178.)

CODIFICATION

October 27, 1986, referred to in subsec. (e)(1)(B), was in the original "the date of the enactment of this Act" which was translated as meaning the date of the enactment of Pub. L. 99-563, which enacted subsec. (e), to reflect the probable intent of Congress.

AMENDMENTS

1986—Subsec. (a). Pub. L. 99-563, § 8(b)(1), inserted reference to section 3905 of this title.

Subsec. (b)(1). Pub. L. 99-563, § 12(d)(1), substituted "liability insurance" for "product liability or completed operations liability insurance, and comprehensive general liability insurance which includes either of these coverages,".

Subsec. (b)(2)(A). Pub. L. 99-563, § 12(d)(2), struck out "product liability or completed operations insurance, and comprehensive general" before "liability coverage".

Subsecs. (d) to (h). Pub. L. 99-563, §§ 6, 8(b)(2), added subsecs. (d) to (h).

**§ 3904. Securities laws**

**(a) Ownership interest of members in risk retention groups**

The ownership interests of members in a risk retention group shall be—

(1) considered to be exempted securities for purposes of section 5 of the Securities Act of 1933 [15 U.S.C. 77e] and for purposes of section 12 of the Securities Exchange Act of 1934 [15 U.S.C. 78l]; and

(2) considered to be securities for purposes of the provisions of section 17 of the Securities

Act of 1933 [15 U.S.C. 77q] and the provisions of section 10 of the Securities Exchange Act of 1934 [15 U.S.C. 78j].

**(b) Investment companies**

A risk retention group shall not be considered to be an investment company for purposes of the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.).

**(c) State blue sky laws**

The ownership interests of members in a risk retention group shall not be considered securities for purposes of any State blue sky law.

(Pub. L. 97-45, § 5, Sept. 25, 1981, 95 Stat. 952.)

REFERENCES IN TEXT

The Investment Company Act of 1940, referred to in subsec. (b), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, as amended, which is classified generally to subchapter I (§80a-1 et seq.) of chapter 2D of this title. For complete classification of this Act to the Code, see section 80a-51 of this title and Tables.

**§ 3905. Clarification concerning permissible State authority**

**(a) No exemption from State motor vehicle no-fault and motor vehicle financial responsibility laws**

Nothing in this chapter shall be construed to exempt a risk retention group or purchasing group authorized under this chapter from the policy form or coverage requirements of any State motor vehicle no-fault or motor vehicle financial responsibility insurance law.

**(b) Applicability of exemptions**

The exemptions provided under this chapter 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 chapter shall be construed to permit the provision or purchase of any other line of insurance by any such group.

**(c) Prohibited insurance policy coverage**

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.

**(d) State authority to specify acceptable means of demonstrating financial responsibility**

Subject to the provisions of section 3902(a)(4) of this title relating to discrimination, nothing in this chapter 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.