

**"CHAPTER 431K
RISK RETENTION**

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" **§431K-1 Definitions.** As used in this chapter:

"Board of directors" or "board" means the governing body of the risk retention group elected by the shareholders or members to establish policy, elect or appoint officers and committees, and make other governing decisions.

"Commissioner" means the insurance commissioner of this State.

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

- (1) Performs that work; or
- (2) Hires an independent contractor to perform that work; but shall include liability for activities which are completed or abandoned before the date of the occurrence giving rise to the liability.

"Director" means a natural person designated in the articles of the risk retention group or designated, elected, or appointed by any other manner, name, or title to act as a director.

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

- (1) For a corporation, the state in which the purchasing group is incorporated; or
- (2) For an unincorporated entity, the state of its principal place of business.

"Financially impaired" means that a risk retention group:

- (1) Has admitted assets that are less than the sum of its aggregate liabilities and the amount of surplus to policyholders required to be maintained by a risk retention group chartered in this State and authorized to do the same kind or kinds of insurance; or
- (2) Has admitted assets that are less than the sum of its aggregate liabilities and outstanding capital stock; or
- (3) Is insolvent.

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

- (1) Meet obligations to policyholders with respect to known claims and reasonably anticipated claims; or
- (2) Pay other obligations in the normal course of business.

"Insolvent" means that a risk retention group has admitted assets that are less than the aggregate amount of its liabilities.

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

"Liability" 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 those other persons resulting from or arising out of:

- (1) Any business, whether for profit or nonprofit, trade, product, services, including professional services, premises, or operations; or
- (2) Any activity of any state or county government, or any agency or political subdivision;

but 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.

"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 (1) and (2) in the definition of "liability".

"Plan of operation" or "feasibility study" means an analysis which presents the expected activities and results of a risk retention group including, not less than the following:

- (1) The coverages, deductibles, coverage limits, rates, and rating classification systems for each line of insurance the group intends to offer;
- (2) Historical and expected loss experience of the proposed members and national experience of similar exposures to the extent that this experience is reasonably available;
- (3) Pro forma financial statements and projections;
- (4) Appropriate opinions by a qualified, independent casualty actuary, including a determination of minimum premiums or participation levels required to commence operations and to prevent a hazardous financial condition;
- (5) Identification of management, underwriting procedures, managerial oversight methods, investment policies;
- (6) Identification of each state in which the risk retention group has obtained, or sought to obtain, a charter and license, and a description of its status in each state; and

- (7) Other matters as may be prescribed by the commissioner for liability insurance companies authorized by the insurance laws of the state in which the risk retention group is chartered.

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

"Purchasing group" means any group which:

- (1) Has as one of its purposes the purchase of liability insurance on a group basis;
- (2) Purchases this insurance only for its group members and only to cover their similar or related liability exposure, as described in [paragraph (3)];
- (3) 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
- (4) Is domiciled in any state.

"Risk retention group" means any corporation or other limited liability association formed under the laws of any state, Bermuda, or the Cayman Islands:

- (1) Whose primary activity consists of assuming and spreading all, or any portion, of the liability exposure of its group members;
- (2) Which is organized for the primary purpose of conducting the activity described under paragraph (1);
- (3) Which:
 - (A) Is chartered and licensed as a liability insurance company and authorized to engage in the business of insurance under the laws of any state; or
 - (B) 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 this date, had certified to the insurance commissioner of at least one state that it satisfied the capitalization requirements of that state, except that any group shall be considered to be a risk retention group only if the group has been engaged in business

continuously since this date and only for the purpose of continuing to provide insurance to cover product liability or completed operations liability, as defined in the Product Liability Risk Retention Act of 1981, 15 U.S.C. §3901 et seq., before the date of the enactment of the Liability Risk Retention Act of 1986, P.L. 99-563;

- (4) Which does not exclude any person from membership in the group solely to provide for members of the group a competitive advantage over the person;
- (5) Which has as its:
 - (A) Members only persons who have an ownership interest in the group and that has as its owners only persons who are members who are provided insurance by the risk retention group; or
 - (B) Sole member and sole owner an organization that is owned by persons who are provided insurance by the risk retention group;
- (6) Whose members are engaged in business or activities similar or related to the liability of which these members are exposed by virtue of any related, similar, or common business trade, product, services, premises, or operations;
- (7) Whose activities do not include the provision of insurance other than:
 - (A) Liability insurance for assuming and spreading all or any portion of the liability for its group members; and
 - (B) Reinsurance with respect to the liability of any other risk retention group, or any members of another group, which is engaged in businesses or activities so that this group or member meets the requirement described in paragraph (6) for membership in the risk retention group that provides this reinsurance; and
- (8) The name of which includes the phrase "risk retention group".

"State" means any state of the United States or the District of Columbia. [L 1987, c 180, pt of §1; am L 1989, c 272, §§2, 3; am L 1997, c 368, §8; am L 2004, c 122, §80; am L 2016, c 140, §3]

" **[§431K-1.5] Financial responsibility.** Whenever pursuant to the laws of this State or any county of this State a demonstration of financial responsibility is required as a

condition for obtaining a license or permit to undertake specified activities, if any such requirement may not be satisfied by obtaining insurance from an insurance company not authorized in this State, then such requirement may not be satisfied by purchasing insurance from a risk retention group not chartered in this State. [L 1989, c 272, §1]

" **§431K-2 Risk retention groups chartered in this State.**

(a) A risk retention group seeking to be chartered in this State shall be chartered and licensed as a liability insurance company authorized by the insurance laws of this State and, except as provided elsewhere in this chapter, shall comply with all of the laws, rules, and requirements applicable to these insurers chartered and licensed in this State and with section 431K-3, to the extent these requirements are not a limitation on the laws, rules, or requirements of this State. Prior to offering insurance in any state, each risk retention group shall also submit for approval to the commissioner a plan of operation or feasibility study and revisions of such plan or study if the group intends to offer any additional lines of liability insurance. Immediately upon receipt of an application for charter, the commissioner shall provide summary information concerning the filing to the National Association of Insurance Commissioners, including:

- (1) The name of the risk retention group;
- (2) The identity of the initial members of the group;
- (3) The identity of those individuals who organized the group or who will provide administrative services or otherwise influence or control the activities of the group;
- (4) The amount and nature of initial capitalization;
- (5) The coverages to be afforded; and
- (6) The states in which the group intends to operate.

Providing notification to the National Association of Insurance Commissioners is in addition to and shall not be sufficient to satisfy the requirements of section 431K-3 or any other sections of this chapter.

(b) New risk retention groups established on or after July 1, 2016, shall be in compliance with the governance standards set forth in subsection (c).

(c) By July 1, 2017, existing risk retention groups shall be in compliance with the following:

- (1) The board shall have a majority of independent directors. The board of directors shall: determine whether a director is independent and has no material relationship with the risk retention group; review such determination annually; and maintain a record of

the determinations, which shall be provided to the commissioner annually. If the risk retention group is reciprocal, then the attorney-in-fact shall be required to adhere to the same standards regarding independence of operation and governance as imposed on the risk retention group's board of directors and subscribers advisory committee[;]

- (2) The term of any material service provider contract entered into with a risk retention group shall not exceed five years. The contract or its renewal requires approval of a majority of the risk retention group's independent directors. The board of directors has the right to terminate a contract at any time for cause after providing adequate notice as defined in the terms of the contract. Service providers of a reciprocal risk retention group shall contract with the risk retention group[;]
- (3) A risk retention group shall not enter into a material service provider contract without the prior written approval of the commissioner[;]
- (4) A risk retention group's plan of operation shall include written policies approved by its board of directors requiring the board to:
 - (A) Provide evidence of ownership interest to each risk retention group member;
 - (B) Develop governance standards applicable to the risk retention group;
 - (C) Oversee the evaluation of the risk retention group's management, including the performance of its captive manager, managing general underwriter, or any other person responsible for underwriting, rate determination, premium collection, claims adjustment and settlement, or preparation of financial statements;
 - (D) Review and approve the amount to be paid under a material service provider contract; and
 - (E) Review and approve at least annually:
 - (i) The risk retention group's goals and objectives relevant to the compensation of officers and service providers;
 - (ii) The performance of officers and service providers as measured against the risk retention group's goals and objectives; and
 - (iii) The continued engagement of officers and material service providers[;]
- (5) A risk retention group shall have an audit committee composed of at least three independent board members.

A nonindependent board member may participate in the committee's activities if invited to do so by the audit committee, but a nonindependent board member shall not serve as a committee member. The commissioner may waive the requirement of an audit committee if the risk retention group demonstrates to the commissioner's satisfaction that having such committee is impracticable and that the board of directors itself is able to sufficiently perform the committee's responsibilities. The audit committee shall have a written charter defining its responsibilities, which shall include:

- (A) Assisting board oversight of the integrity of financial statements, compliance with legal and regulatory requirements, and qualifications, independence, and performance of the independent auditor or actuary;
 - (B) Reviewing annual audited financial statements and quarterly financial statements with management;
 - (C) Reviewing annual audited financial statements with its independent auditor and, if deemed advisable, the risk retention group's quarterly financial statements;
 - (D) Reviewing risk assessment and risk management policies;
 - (E) Meeting with management, either directly or through a designated representative of the committee;
 - (F) Meeting with independent auditors, either directly or through a designated representative of the committee;
 - (G) Reviewing with the independent auditor any audit problems and management's response;
 - (H) Establishing clear hiring policies applicable to the hiring of employees or former employees of the independent auditor by the risk retention group;
 - (I) Requiring the independent auditor to rotate the lead audit partner having primary responsibility for the risk retention group's audit, as well as the audit partner responsible for reviewing that audit, so that neither individual performs audit services for the risk retention group for more than five consecutive fiscal years; and
 - (J) Reporting regularly to the board of directors[;]
- (6) The board of directors shall adopt governance standards, which shall be available to risk retention

group members through electronic or other means and, upon request, provided to risk retention group members. The governance standards shall include:

- (A) A process by which risk retention group members elect directors;
 - (B) Director qualifications, responsibilities, and compensation;
 - (C) Director orientation and continuing education requirements;
 - (D) A process allowing the board access to management and, as necessary and appropriate, independent advisors;
 - (E) Policies and procedures for management succession; and
 - (F) Policies and procedures providing for an annual performance evaluation of the board[;]
- (7) The board of directors shall adopt a code of business conduct and ethics applicable to directors, officers, and employees of the risk retention group and disclose criteria for waivers of code provisions to the board of directors, which shall be available to risk retention group members through electronic or other means and, upon request, provided to risk retention group members. Provisions of the code shall address:
- (A) Conflicts of interest;
 - (B) Matters covered under the Hawaii corporate opportunities doctrine;
 - (C) Confidentiality;
 - (D) Fair dealing;
 - (E) Protection and proper use of risk retention group assets;
 - (F) Standards for complying with applicable laws, rules, and regulations; and
 - (G) Mandatory reporting of illegal or unethical behavior affecting the operation of the risk retention group[;]
- (8) The captive manager, president, or chief executive officer of a risk retention group shall promptly notify the commissioner in writing of any known noncompliance with the governance standards established in this subsection.

(d) For the purposes of this section:

"Independent director" means a director who does not have a material relationship with the risk retention group. A person who is a direct or an indirect owner of or subscriber in the risk retention group, as referenced in the definition of "risk retention group" in section 431K-1, or who is an officer, a

director, or an employee of the owner and insured unless some other position of the officer, director, or employee constitutes a "material relationship", is considered independent. The commissioner shall have the authority to determine whether or not a director is independent.

A director has a "material relationship" with a risk retention group if the director or a member of the director's immediate family:

- (1) Receives in any twelve-month period from the risk retention group or a consultant or service provider to the risk retention group compensation or other item of value in an amount equal to or greater than five per cent of the risk retention group's gross written premium or two per cent of the risk retention group's surplus as measured at the end of any fiscal quarter falling in the twelve-month period, whichever is greater. This provision also applies to compensation or items of value received by any business with which the director or a member of the director's immediate family is affiliated. The material relationship shall be deemed to exist for one year after the item of value is received or the compensation ceases or falls below the threshold established in this paragraph, as applicable;
- (2) Is affiliated with or employed in a professional capacity by a current or former internal or external auditor of the risk retention group. The material relationship shall be deemed to exist for one year after the affiliation, employment, or audit ends; or
- (3) Is employed as an executive officer of another company whose board of directors includes executive officers of the risk retention group unless a majority of the membership of the other company's board of directors is the same as the membership of the board of directors of the risk retention group. The material relationship shall be deemed to exist for one year after the employment or service ends.

"Material service provider" includes a captive manager, auditor, accountant, actuary, investment advisor, attorney, managing general underwriter, or other person responsible for underwriting, determination of rates, premium collection, claims adjustment or settlement, or preparation of financial statements, whose aggregate annual contract fees are equal to or greater than five per cent of the risk retention group's annual gross written premium or two per cent of its surplus, whichever is greater. "Material service provider" does not mean defense counsel retained by a risk retention group unless the counsel's

annual fees are equal to or greater than five per cent of a risk retention group's annual gross written premium or two per cent of its surplus, whichever is greater. [L 1987, c 180, pt of §1; am L 2016, c 140, §4]

" **§431K-3 Risk retention groups not chartered in this State.** Risk retention groups chartered in states other than this State and seeking to do business as a risk retention group in this State shall observe and abide by the laws of this State as follows:

- (1) Before offering insurance in this State, a risk retention group shall submit to the commissioner:
 - (A) A statement identifying the state or states in which the risk retention group is chartered and licensed as a liability insurance company, date of chartering, its principal place of business, and other information, including information on its membership, as the commissioner of this State may require to verify that the risk retention group is qualified as a risk retention group;
 - (B) A copy of its plan of operations or a feasibility study and revisions of this plan or study submitted to its state of domicile; provided that the provision relating to the submission of a plan of operation or a feasibility study shall not apply with respect to any line or classification of liability insurance which was:
 - (i) Defined in the Product Liability Risk Retention Act of 1981, 15 U.S.C. §3901 et seq., before October 27, 1986; and
 - (ii) Offered before that date by any risk retention group which had been chartered and operating for not less than three years before that date; and
 - (C) A statement of registration which designates the commissioner as its agent for the purpose of receiving service of legal documents or process;
- (2) Any risk retention group doing business in this State shall submit to the commissioner:
 - (A) A copy of each examination of the risk retention group as certified by the commissioner or public official conducting the examination in its state of domicile;
 - (B) Upon request by the commissioner, a copy of any audit performed with respect to the risk retention group; and

- (C) Information as may be required to verify its continuing qualification as a risk retention group;
- (3) Taxation of risk retention groups shall be as follows:
 - (A) All premiums paid for coverages within this State to risk retention groups shall be subject to taxation at the same rate and subject to the same interest, fines, and penalties for nonpayment as that applicable to risk retention group captives chartered in this State pursuant to chapter 431, article 19;
 - (B) To the extent producers are utilized, the producers shall report and pay the taxes for the premiums for risks which the producers have placed with or on behalf of a risk retention group not chartered in this State; or
 - (C) To the extent producers are not utilized or fail to pay the tax, each risk retention group shall pay the tax for risks insured within the State; provided that each risk retention group shall report all premiums paid to it for risks insured within the State;
- (4) Any risk retention group shall comply with chapter 431, article 13 regarding deceptive, false, or fraudulent acts or practices, and unfair claims settlement practices; provided that if the commissioner seeks an injunction regarding such conduct, the injunction shall be obtained from a court of competent jurisdiction;
- (5) Any risk retention group shall submit to an examination by the commissioner to determine its financial condition if the commissioner of the jurisdiction in which the group is chartered has not initiated an examination or does not initiate an examination within sixty days after a request by the commissioner of this State. Any examination shall be coordinated to avoid unjustified repetition and conducted in an expeditious manner and in accordance with the National Association of Insurance Commissioners' Examiner Handbook;
- (6) The following notice shall be printed in ten point type on the front page of every application for insurance from a risk retention group, and on the front page and the declaration page of every policy issued by a risk retention 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 rules of your state. State insurance insolvency guaranty funds are not available for your risk retention group;

- (7) The following acts by a risk retention group are prohibited:
 - (A) The solicitation or sale of insurance by a risk retention group to any person who is not eligible for membership in the group; and
 - (B) The solicitation or sale of insurance by, or operation of, a risk retention group that is in a hazardous financial condition or is financially impaired;
- (8) No risk retention group shall be allowed to do business in this State if an insurance company is directly or indirectly a member or owner of the risk retention group, other than in the case of a risk retention group all of whose members are insurance companies;
- (9) No risk retention group may offer insurance policy coverage prohibited by chapter 431 or declared unlawful by the highest court of this State; and
- (10) A risk retention group not chartered in this State and doing business in this State shall comply with a lawful order issued in a voluntary dissolution proceeding or in a delinquency proceeding commenced by any state insurance commissioner if there has been a finding of financial impairment after an examination under paragraph (5). [L 1987, c 180, pt of §1; am L 1989, c 272, §4; am L 1993, c 205, §38; am L 2002, c 155, §98; am L 2015, c 63, §8]

" **[§431K-3.5] Registration fees and service fees of risk retention groups not chartered in this State.** (a) A risk retention group chartered in states other than this State and seeking to do business as a risk retention group in this State shall pay an initial registration fee of \$300 to the commissioner and shall thereafter pay annually a service fee of \$150 on or before August 16 of each year in which the risk retention group intends to do business in this State.

(b) If the service fee is not paid on or before August 16 of the year in which payment is due, a penalty shall be imposed in the amount of fifty per cent of the service fee. The commissioner shall provide written notice of the delinquency of payment and the imposition of the authorized penalty. If the

service fee and the penalty are not paid within thirty days immediately following the date of the notice of delinquency, the commissioner may revoke the registration of the risk retention group and may not reinstate the registration until the service fee and the penalty have been paid. [L 2015, c 63, pt of §1]

" **§431K-4 Compulsory associations.** (a) No risk retention group shall be permitted to join or contribute financially to any insurance insolvency guaranty fund, or similar mechanism, in this State, nor shall any risk retention group or its insureds receive any benefit from any such fund for claims arising out of the operations of such risk retention group.

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

(c) When a purchasing group obtains insurance covering its members' risks from an insurer authorized in Hawaii, claims shall be covered by the property and liability insurance guaranty association, subject to the provisions of chapter 431, article 16.

(d) A risk retention group shall participate in this State's joint underwriting associations and mandatory liability pools as provided by any law of this State. [L 1987, c 180, pt of §1; am L 1989, c 272, §5]

" **§431K-5 REPEALED.** L 1989, c 272, §9.

" **[[§431K-6] Purchasing groups; exemption from certain laws relating to the group purchase of insurance.** A purchasing group meeting the criteria established under the provisions of the Federal Liability Risk Retention Act of 1986, P.L. 99-563, shall be exempt from any law of this State relating to the creation of groups for the purchase of insurance, prohibition of group purchasing or any law that would discriminate against a purchasing group or its members. In addition, an insurer shall be exempt from any law of this State which prohibits providing, or offering to provide, to a purchasing group or its members advantages based on their loss and expense experience not afforded to other persons with respect to rates, policy forms, coverages or other matters. A purchasing group shall be subject to all other applicable laws of this State. [L 1987, c 180, pt of §1]

" **§431K-7 Notice and registration requirements of purchasing groups.** (a) A purchasing group that intends to do business in this State shall furnish, on forms prescribed by the National Association of Insurance Commissioners, notice to the commissioner that shall include the following:

- (1) Identification of the state in which the group is domiciled;
- (2) Specification of the lines and classifications of liability insurance that the purchasing group intends to purchase;
- (3) Identification of the insurance company or risk retention group from which the group intends to purchase its insurance and the domicile of the company or risk retention group; and
- (4) Identification of the principal place of business of the group.

(b) The commissioner may require a purchasing group to provide the following information:

- (1) The method by which, and the person or persons through whom, insurance will be offered to its members whose risks are resident or located in this State;
- (2) Identify all other states in which the group intends to do business; and
- (3) Provision of other information to verify that the purchasing group qualifies as such under section 431K-1.

(c) The purchasing group shall register with and designate the commissioner or other appropriate authority as its agent solely for the purpose of receiving service of legal documents or process, except that these requirements shall not apply in the case of a purchasing group that:

- (1) Was domiciled before April 1, 1986, and is domiciled on and after October 27, 1986, in any state of the United States;
- (2) Before October 27, 1986, purchased insurance from an insurance carrier licensed in any state, and since October 27, 1986, purchased its insurance from an insurance carrier licensed in any state;
- (3) Was a purchasing group under the requirements of the Product Liability Risk Retention Act of 1981, 15 U.S.C. §3901 et seq., before October 27, 1986; and
- (4) Does not purchase insurance that was not authorized for purposes of an exemption under that Act, as in effect before October 27, 1986.

(d) Within ten days a purchasing group shall notify the commissioner of any changes in any of the items set forth in

subsections (a) and (b). [L 1987, c 180, pt of §1; am L 1989, c 272, §6; am L 1993, c 321, §17; am L 1997, c 368, §9]

" **[§431K-7.1] Registration fees and service fees of purchasing groups.** (a) A purchasing group that intends to do business in this State shall pay an initial registration fee of \$300 to the commissioner and shall thereafter pay annually a service fee of \$150 on or before August 16 of each year in which the purchasing group intends to do business in this State.

(b) If the service fee is not paid on or before August 16 of the year in which payment is due, a penalty shall be imposed in the amount of fifty per cent of the service fee. The commissioner shall provide written notice of the delinquency of payment and the imposition of the authorized penalty. If the service fee and the penalty are not paid within thirty days immediately following the date of the notice of delinquency, the commissioner may revoke the registration of the purchasing group and may not reinstate the registration until the service fee and the penalty have been paid. [L 2015, c 63, pt of §1]

" **§431K-7.5 Purchasing group taxation.** Premium taxes and taxes on premiums paid for coverage of risks resident or located in this State by a purchasing group or any members of the purchasing group shall be:

- (1) Imposed at the same rate and subject to the same interest, fines, and penalties as that applicable to premium taxes and taxes on premiums paid for similar coverage from a similar insurance source by other insurers; and
- (2) Paid first by that insurance source, and if not by that source, then by the producer for the purchasing group, and if not by that producer, then by the purchasing group, and if not by that purchasing group, then by each of its members. [L 1993, c 321, §4; am L 2002, c 155, §99]

" **§431K-8 Restrictions on insurance purchased by purchasing groups.** (a) A purchasing group located in this State may not purchase insurance from:

- (1) A risk retention group that is not chartered in this State; or
- (2) An insurer not authorized in this State, unless the purchase is made through a licensed producer acting pursuant to the surplus lines laws set forth in article 8 of chapter 431.

(b) The terms of any liability insurance policy obtained by a purchasing group shall not provide nor be construed to provide insurance coverage prohibited by chapter 431 or declared unlawful by the highest court of this State.

(c) A purchasing group which obtains liability insurance from an insurer not authorized in this State or a risk retention group shall inform each of the members of the group which have a risk resident or located in this State that the risk retention group or insurer may not be subject to any insurance laws of this State.

(d) No purchasing group may purchase insurance providing for a deductible or self-insured retention unless the deductible or self-insured retention shall be the sole responsibility of each individual member of the purchasing group. [L 1987, c 180, pt of §1; am L 1989, c 272, §7; am L 1998, c 76, §1; am L 2002, c 155, §100; am L 2006, c 154, §42]

" **§431K-9 Administrative and procedural authority regarding risk retention groups and purchasing groups.** The commissioner is authorized to make use of any of the powers established under chapter 431 to enforce the laws of this State as long as those powers are not specifically preempted by the Product Liability Risk Retention Act of 1981, 15 U.S.C. §3901 et seq., as amended by the Risk Retention Amendments of 1986, P.L. 99-563. This includes, but is not limited to, the commissioner's administrative authority to investigate, issue subpoenas, conduct depositions and hearings, issue orders, and impose penalties. With regard to any investigation, administrative proceedings, or litigation, the commissioner may rely on the procedural law and rules of this State. The injunctive authority of the commissioner in regard to risk retention groups shall be restricted by the requirement that any injunction be issued by a court of competent jurisdiction. All penalties collected under this section and section 431K-7.1 shall be deposited to the credit of the compliance resolution fund. [L 1987, c 180, pt of §1; am L 2015, c 63, §9]

" **§431K-10 Penalties.** A risk retention group which violates any provision of this chapter shall be subject to fines and penalties applicable to licensed insurers generally, including revocation of its license, the right to do business in this State, or both. All penalties collected pursuant to this section and section 431K-3.5 shall be deposited to the credit of the compliance resolution fund. [L 1987, c 180, pt of §1; am L 2015, c 63, §10]

" **§431K-11 Duty of producer to obtain license and to keep records.** (a) Any person acting or offering to act as a producer for a risk retention group or purchasing group which solicits members, sells insurance coverage, purchases coverage for its members located within the State, or otherwise does business in this State, before commencing any such activity shall obtain a license from the commissioner.

(b) Whenever a licensed insurance producer or surplus lines producer places business pursuant to subsection (a), the producer shall keep a complete and separate record of each policy procured from a risk retention group and for a purchasing group. The record shall be open to examination by the commissioner. For each policy and each kind of insurance provided in the policy, the record shall include the following:

- (1) The limit of liability and peril insured;
- (2) A brief description of the property insured and its location;
- (3) The effective date of the contract and its terms;
- (4) The time period covered by the contract;
- (5) The gross premium charged;
- (6) Any return premiums paid;
- (7) The name and address of the risk retention group which issued the policy;
- (8) The name and address of the insured; and
- (9) Any additional information required by the commissioner. [L 1987, c 180, pt of §1; am L 1989, c 272, §8; am L 2001, c 216, §26]

" **[\$431K-12] Binding effect of orders issued in United States District Court.** An order issued by any district court of the United States enjoining a risk retention group from soliciting or selling insurance, or operating in any state or in all states or in any territory or possession of the United States upon a finding that the group is in a hazardous financial condition shall be enforceable in the courts of this State. [L 1987, c 180, pt of §1]

" **[\$431K-13] Rules.** The commissioner may adopt rules under chapter 91, relating to risk retention groups as may be necessary or desirable to carry out this chapter. [L 1987, c 180, pt of §1]