

ACT 272

H.B. NO. 1747

A Bill for an Act Relating to Risk Retention Groups.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 431K, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§431K- 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.”

SECTION 2. Section 431K-1, Hawaii Revised Statutes, is amended by adding two new definitions to be appropriately inserted and to read as follows:

“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.

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

SECTION 3. Section 431K-1, Hawaii Revised Statutes, is amended by amending the definition of “plan of operation” or “feasibility study” to read:

““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; [and]
- (6)<sup>1</sup> 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
- [(6)] (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.”

SECTION 4. Section 431K-3, Hawaii Revised Statutes, is amended to read as follows:

**“[[§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 such 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 United States Code 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 the group’s financial statement submitted to the insurance commissioner of its state of domicile, which shall be certified by an independent public accountant and contain a statement of opinion on loss and loss adjustment expense reserves

- made by a member of the American Academy of Actuaries or a qualified loss reserve specialist under criteria established by the National Association of Insurance Commissioners;
- (B) 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;
  - (C) Upon request by the commissioner, a copy of any audit performed with respect to the risk retention group; and
  - (D) 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 foreign admitted insurers;
  - (B) To the extent agents or brokers are utilized, the agents or brokers shall report and pay the taxes for the premiums for risks which the agents or brokers have placed with or on behalf of a risk retention group not chartered in this State; or
  - (C) To the extent agents or brokers 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 [section 431-641 to 431-648] 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 such examination shall be coordinated to avoid unjustified repetition and conducted in an expeditious manner and in accordance with the National Association of Insurance Commissioner's Examiner Handbook[.];
- (6) [Any policy issued by a risk retention group shall contain in ten point type on the front page and the declaration page, the following notice:]  
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 such 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 [this] 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)."

SECTION 5. Section 431K-4, Hawaii Revised Statutes, is amended to read as follows:

"**[[§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.

[(b)] (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."

SECTION 6. Section 431K-7, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) A purchasing group which intends to do business in this State shall furnish notice to the commissioner which 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 which 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 such company[;] or risk retention group;
- (4) Identification of the principal place of business of the group; [and]
- (5) Provision of other information as may be required by the commissioner to verify that the purchasing group qualifies as such under section 431K-1[.]; and
- (6) 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."

SECTION 7. Section 431K-8, Hawaii Revised Statutes, is amended to read as follows:

**“[[§431K-8]] Restrictions on insurance purchased by purchasing groups.**

(a) A purchasing group located in this State may not purchase insurance from a risk retention group that is not chartered in [a state] this State or from an insurer not [admitted in the state in which the purchasing group is located,] authorized in this State, unless the purchase is effected through a licensed agent or broker acting pursuant to the surplus lines laws [and regulations of that state.] set forth in chapter 431, article 8.

(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.”

SECTION 8. Section 431K-11, Hawaii Revised Statutes, is amended to read as follows:

**“[[§431K-11]] Duty of agents or brokers to obtain license[.] and to keep records.**

(a) Any person acting[, ] or offering to act[, ] as an agent or broker 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 agent or surplus lines broker places business pursuant to subsection (a), the agent or broker 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.”

SECTION 9. Section 431K-5, Hawaii Revised Statutes, is repealed.

SECTION 10. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>2</sup>

SECTION 11. This Act shall take effect upon its approval.

(Approved June 8, 1989.)

**Notes**

1. So in original.
2. Edited pursuant to HRS §23G-16.5.