

INSURANCE CODE

TITLE 10. PROPERTY AND CASUALTY INSURANCE

SUBTITLE G. POOLS, GROUPS, PLANS, AND SELF-INSURANCE

CHAPTER 2201. RISK RETENTION GROUPS AND PURCHASING GROUPS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2201.001. PURPOSE OF CHAPTER. The purpose of this chapter is to:

(1) regulate the formation and operation of risk retention groups and purchasing groups in this state formed under:

(A) the Product Liability Risk Retention Act of 1981 (15 U.S.C. Section 3901 et seq.); or

(B) the Liability Risk Retention Act of 1986 (15 U.S.C. Section 3901 et seq.); and

(2) protect the public by the appropriate regulation of groups described by Subdivision (1) to the extent permitted by law.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2201.002. GENERAL DEFINITIONS. In this chapter:

(1) "Agent" includes the terms "agent" and "broker" as used in the Liability Risk Retention Act of 1986 (15 U.S.C. Section 3901 et seq.).

(2) "Hazardous financial condition" means a condition in which a risk retention group, based on the group's present or reasonably anticipated financial condition and although the group is not yet financially impaired or insolvent, is unlikely to be able to:

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

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

(3) "Insurance" means primary insurance, excess insurance, reinsurance, surplus lines insurance, and any other arrangement for transferring and distributing risk that is

determined to be insurance under the laws of this state.

(4) "State" means any state of the United States or the District of Columbia.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2201.003. LIABILITY DEFINED. (a) In this chapter, except as provided by Subsection (b) or as otherwise provided by this chapter:

(1) "Completed operations liability" means liability, including liability for activities that are completed or abandoned before the date of the occurrence giving rise to the liability, arising out of the installation, maintenance, or repair of any product at a site that is not owned or controlled by:

(A) a person who performs that work; or

(B) a person who hires an independent contractor to perform that work.

(2) "Liability" means legal liability for damages, including costs of defense, legal costs, fees, and other claims expenses, incurred because of personal injury, property damage, or other damage or loss to another person resulting from or arising out of:

(A) a product, trade, or business, regardless of whether the business operates for profit;

(B) operations, premises, or services, including professional services; or

(C) any activity of:

(i) a state or local government; or

(ii) an agency or political subdivision of a state or local government.

(3) "Product liability" means liability for damages incurred because of any personal injury, death, emotional harm, consequential economic damage, or property damage, including damage 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 that person when the incident giving rise to the claim occurred.

(b) In this chapter, "liability" does not include:

(1) liability for damages incurred because of personal injury, property damage, or other damage or loss resulting from a personal, familial, or household activity or responsibility; or

(2) an employer's liability with respect to the employer's employees other than legal liability under the Federal Employers' Liability Act (45 U.S.C. Section 51 et seq.).

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2201.004. AGENT LICENSE REQUIRED. (a) A person, firm, partnership, or corporation may not act or offer to act as an agent for, or aid in any manner in the solicitation, negotiation, or placement of insurance on behalf of, a risk retention group or purchasing group operating in this state or a group member in this state without first obtaining a license as an agent under:

(1) Chapter 4051, if a resident of this state; or

(2) Chapter 4056, if a nonresident of this state.

(b) A person, firm, partnership, or corporation must comply with Chapter 981 before the person, firm, partnership, or corporation, on behalf of a purchasing group or a group member in this state:

(1) acts or offers to act as an agent for an insurer not authorized to engage in business in this state; or

(2) aids in any manner in the solicitation, negotiation, or placement of insurance with an insurer not authorized to engage in business in this state.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2201.005. EXEMPTION FROM CERTAIN REQUIREMENTS. (a) A provision of Chapter 981, 4055, or 4056 does not apply to an agent described by Subsection (b) if the provision:

(1) requires residency in this state;

(2) requires countersignatures;

(3) prohibits the solicitation of insurance in this state by a nonresident or the payment of commissions to a nonresident; or

(4) prohibits a nonresident from acting as a surplus or excess lines agent.

(b) The exemption provided by Subsection (a) applies to an agent licensed under Chapter 981, 4055, or 4056 who is acting on behalf of a risk retention group or purchasing group operating in this state or a group member in this state in providing or placing liability insurance for risks located in this state.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2201.006. AUTHORITY OF COMMISSIONER. (a) To enforce the laws of this state, the commissioner may use any authority provided by this code that is not specifically preempted by the Product Liability Risk Retention Act of 1981, as amended by the Liability Risk Retention Act of 1986 (15 U.S.C. Section 3901 et seq.), including the authority to investigate, issue a subpoena, conduct a deposition or hearing, issue an order, and impose a penalty.

(b) The commissioner shall rely on the procedural laws and rules of this state with regard to an investigation, an administrative proceeding, or litigation.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2201.007. ANNUAL REPORT TO COMMISSIONER. An agent licensed as required by Section 2201.004 shall report to the commissioner not later than March 1 of each year the activities and scope of services being provided to a risk retention group or purchasing group. The report must be made in accordance with rules adopted by the commissioner.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2201.008. RULES. The commissioner may adopt rules

relating to risk retention groups and purchasing groups that are necessary to carry out this chapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER B. RISK RETENTION GROUP QUALIFICATIONS

Sec. 2201.051. GENERAL QUALIFICATIONS OF RISK RETENTION GROUP. A risk retention group must be a corporation or other limited liability association that:

(1) is organized primarily to assume and spread, and engages primarily in assuming and spreading, all or any portion of the liability exposure of the group's members; and

(2) otherwise meets the qualifications of this subchapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2201.052. NAME OF GROUP. A risk retention group must include in its name the phrase "risk retention group."

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2201.053. STATUS AS LIABILITY INSURER REQUIRED. A corporation or other limited liability association must be chartered and authorized to engage in the business of insurance as a liability insurer under the laws of any state to act as a risk retention group.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2201.054. QUALIFICATIONS REGARDING AUTHORITY OF CERTAIN ENTITIES TO ENGAGE IN BUSINESS. (a) In this section, "completed operations liability" and "product liability" have the meanings assigned by the Product Liability Risk Retention Act of 1981 (15 U.S.C. Section 3901 et seq.) before the effective date of the Liability Risk Retention Act of 1986 (15 U.S.C. Section 3901 et

seq.).

(b) Notwithstanding Section 2201.053, a corporation or other limited liability association may be considered a risk retention group if:

(1) before January 1, 1985, the corporation or association:

(A) was chartered and authorized to engage in the business of insurance under the laws of Bermuda or the Cayman Islands; and

(B) had certified to the commissioner, director, or superintendent of insurance of at least one state that it satisfied the capitalization requirements of that state; and

(2) since January 1, 1985, the corporation or association has been continuously engaged in business solely to continue to provide insurance to cover completed operations liability or product liability.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2201.055. QUALIFICATIONS REGARDING MEMBERSHIP. (a) A risk retention group must be composed of members who are engaged in similar or related businesses or activities with respect to the liability to which those members are exposed by virtue of any related, similar, or common product, trade, business, operations, premises, or services.

(b) A risk retention group must have:

(1) as members, only persons who are provided insurance by the group; or

(2) as the sole owner, an organization that has:

(A) as members, only persons who comprise the membership of the group; and

(B) as owners, only persons who comprise the membership of the group and are provided insurance by the group.

(c) A risk retention group may not exclude a person from membership in the group solely to provide a competitive advantage for group members over that person.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff.

April 1, 2007.

Sec. 2201.056. AUTHORIZED ACTIVITIES. (a) A risk retention group may provide:

(1) liability insurance for assuming and spreading all or any portion of the liability of the group's members; and

(2) reinsurance with respect to the liability of another risk retention group, or a member of that group, engaged in businesses or activities that meet the requirements of Section 2201.055(a) for membership in the group providing reinsurance.

(b) A risk retention group may not engage in activities that include providing insurance other than the insurance described by Subsection (a).

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER C. RISK RETENTION GROUPS

CHARTERED IN THIS STATE

Sec. 2201.101. ELIGIBILITY REQUIREMENTS. Except as otherwise provided by this chapter, a risk retention group that applies to be chartered in this state must:

(1) be chartered and authorized to engage in the business of insurance under Chapter 822, 861, 883, or 942; and

(2) comply with all the laws, rules, and requirements, including Chapter 804, applicable to insurers authorized to engage in business under those chapters and with Subchapter D to the extent those requirements do not limit the laws, rules, or requirements of this state.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2201.102. CHARTER APPLICATION. (a) A risk retention group that applies to be chartered in this state shall provide to the commissioner with the application for charter the following in accordance with rules adopted by the commissioner:

(1) the group's name;

(2) the identity of the group's initial members;

(3) the identity of the individuals who organized the group or who will provide administrative services or otherwise influence or control the group's activities;

(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.

(b) Immediately on receipt of an application for charter, the commissioner shall provide summary information concerning the filing, including the information provided under Subsection (a), to the National Association of Insurance Commissioners.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2201.103. PLAN OF OPERATION; REVISIONS. (a) Except as provided by Subsection (b), before a risk retention group chartered in this state may offer insurance in any state, the group must submit to the commissioner for approval a plan of operation as described by Section 2201.202.

(b) A risk retention group is not required to submit a plan of operation under this section with respect to any kind or classification of liability insurance that:

(1) was defined in the Product Liability Risk Retention Act of 1981 (15 U.S.C. Section 3901 et seq.), as that Act existed before October 27, 1986; and

(2) was offered before October 27, 1986, by any risk retention group that had been chartered and operating for at least three years before that date.

(c) The risk retention group must submit a revision of the group's plan of operation to the commissioner and the commissioner must approve the revision before the group:

(1) offers an additional line of insurance in this state or in any other state; or

(2) effects a change in the group's operations as described in the plan of operation.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2201.104. FILING FEE. (a) In addition to all other fees imposed on an insurer chartered and authorized to engage in business under Chapter [822](#), [861](#), [883](#), or [942](#), a risk retention group chartered in this state shall pay a filing fee in an amount not to exceed \$1,000 as set by rules adopted by the commissioner.

(b) Fees collected under this section shall be deposited to the credit of the Texas Department of Insurance operating account to pay expenses incurred by the commissioner under Sections [2201.102](#) and [2201.103](#).

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. [2017](#)), Sec. 2, eff. April 1, 2007.

SUBCHAPTER D. RISK RETENTION GROUPS

NOT CHARTERED IN THIS STATE

Sec. 2201.151. COMPLIANCE REQUIRED. A risk retention group chartered and authorized to engage in business in another state, Bermuda, or the Cayman Islands shall comply with this subchapter to engage in business as a risk retention group in this state.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. [2017](#)), Sec. 2, eff. April 1, 2007.

Sec. 2201.152. PREREQUISITES TO OFFERING INSURANCE. (a) Before offering insurance in this state, a risk retention group not chartered in this state must submit to the commissioner:

(1) a statement that:

(A) identifies the state or states in which the group is chartered and authorized to engage in business as a liability insurer, the date of charter, and the group's principal place of business; and

(B) provides any other information the commissioner requires to verify that the group qualifies as a risk retention group under Subchapter B, including information on the group's membership;

(2) except as provided by Subsection (b), a copy of the group's plan of operation, as described by Section [2201.202](#), and

revisions of that plan submitted to the state in which the group is chartered and authorized to engage in business; and

(3) a statement of registration that designates the commissioner as the group's agent for the purpose of receiving service of legal documents or process as provided by Chapter 804.

(b) A risk retention group is not required to submit a plan of operation under this section with respect to any line or classification of liability insurance that:

(1) was defined in the Product Liability Risk Retention Act of 1981 (15 U.S.C. Section 3901 et seq.), as that Act existed before October 27, 1986; and

(2) was offered before October 27, 1986, by any risk retention group that had been chartered and operating for at least three years before that date.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2201.153. REQUIREMENTS FOR CONTINUING BUSINESS. (a) A risk retention group not chartered in this state that engages in business in this state shall submit to the commissioner:

(1) a copy of the group's financial statement submitted to the state in which the group is chartered and authorized to engage in business;

(2) a copy of each examination of the group as certified by the commissioner, director, or superintendent of insurance of another state or other public official conducting the examination;

(3) on the commissioner's request, a copy of any audit performed with respect to the group; and

(4) any other information required to verify that the group continues to qualify as a risk retention group under Subchapter B.

(b) A financial statement submitted under Subsection (a)(1) must:

(1) be certified by an independent public accountant; and

(2) contain a statement of opinion on loss and loss

adjustment expense reserves made:

(A) under criteria established by the National Association of Insurance Commissioners; and

(B) by a member of the American Academy of Actuaries or a qualified loss reserve specialist.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2201.154. FILING FEES. (a) The commissioner by rule shall impose a filing fee in an amount not to exceed \$500 for filing the items described by Sections 2201.152(a)(1) and (2).

(b) The commissioner by rule may impose a filing fee in an amount not to exceed \$500 for filing the financial statement under Section 2201.153(a)(1). A risk retention group shall provide to the comptroller all information the comptroller requests in connection with the reporting, collection, enforcement, and administration of the fee.

(c) Fees collected under this section shall be deposited to the credit of the Texas Department of Insurance operating account. Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2201.155. PAYMENT OF TAXES. (a) A risk retention group not chartered in this state is liable for the payment of premium and maintenance taxes and taxes on premiums of direct business for risks located in this state and shall report to the commissioner the net premiums written for risks located in this state. The group is subject to taxation, and any fine or penalty related to that taxation, on the same basis as a foreign admitted insurer in accordance with Chapters 4, 201, 202, 203, 221, 222, 224, 227, 228, and 251-257.

(b) A risk retention group shall provide to the comptroller all information the comptroller requests in connection with the reporting, collection, enforcement, and administration of taxes under this section.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2H.006, eff. April 1, 2009.

Sec. 2201.156. EXAMINATION OF FINANCIAL CONDITION; DISSOLUTION OR DELINQUENCY PROCEEDINGS. (a) A risk retention group not chartered in this state must submit to an examination by the commissioner to determine the group's financial condition if the commissioner of insurance of the jurisdiction in which the group is chartered and authorized to engage in business has not initiated an examination on or before the 60th day after the date the commissioner of this state requests an examination.

(b) The commissioner shall:

(1) coordinate the examination under Subsection (a) to avoid unjustified repetition; and

(2) conduct the examination in an expeditious manner under Sections 401.051, 401.052, 401.054-401.062, 401.103-401.106, 401.151, 401.152, 401.155, and 401.156 and Chapters 86 and 803 in accordance with the National Association of Insurance Commissioners Financial Condition Examiner's Handbook.

(c) A risk retention group not chartered in this state that engages in business in this state must comply with an order issued in a voluntary dissolution proceeding or in a delinquency proceeding commenced by the commissioner or by a commissioner of another jurisdiction if, after an examination under this section, there is a finding that the group is financially impaired.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2201.157. APPLICABILITY OF STATE LAWS PROHIBITING CERTAIN ACTS OR PRACTICES. (a) A risk retention group not chartered in this state shall comply with the laws of this state relating to deceptive, false, or fraudulent acts or practices, including Chapters 541 and 543.

(b) A risk retention group not chartered in this state and the group's agents and representatives shall comply with Chapter 542.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2201.158. INJUNCTIVE RELIEF. (a) A risk retention group not chartered in this state must comply with the terms of an injunction issued by a court of this state or any other state based on a finding that the group is in a hazardous financial condition or is financially impaired.

(b) Injunctive relief must be issued by a court if the commissioner seeks to enjoin a risk retention group not chartered in this state from:

(1) violating the law of this state prohibiting deceptive, false, or fraudulent acts or practices;

(2) soliciting or selling insurance to a person who is not eligible for membership in the group; or

(3) soliciting or selling insurance or operating when the group is in a hazardous financial condition or is financially impaired.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER E. PROVISIONS REGULATING GENERAL OPERATION OF RISK RETENTION GROUPS

Sec. 2201.201. SCOPE OF AUTHORITY. A risk retention group may engage in the business of insurance in this state only:

(1) as a risk retention group; and

(2) to conduct the activities described in this chapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2201.202. PLAN OF OPERATION. A plan of operation submitted to the commissioner under Section 2201.103 or 2201.152 must be in the form of an analysis that presents the expected activities and results of a risk retention group, including, at a minimum:

(1) information sufficient to verify that the group's members are engaged in businesses or activities that are similar or related with respect to the liability to which those members are exposed by virtue of any related, similar, or common product, trade, business, operations, premises, or services;

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

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

(4) pro forma financial statements and projections;

(5) appropriate opinions, including a determination of minimum premium or participation levels required to begin operations and to prevent a hazardous financial condition, by:

(A) a qualified, independent casualty actuary who is a member in good standing of the American Academy of Actuaries; or

(B) an individual who the commissioner recognizes as having comparable training and experience;

(6) identification of management, underwriting and claims procedures, marketing methods, managerial oversight methods, and investment policies; and

(7) other matters prescribed by the insurance laws of the state in which the group is chartered.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2201.203. AGENT TO VERIFY AUTHORITY. Before placing business with a risk retention group, each agent shall secure from the appropriate insurance regulatory authority a certified copy of the certificate of authority verifying that the insurer is authorized in the insurer's domiciliary jurisdiction to write the liability insurance policy the agent proposes to procure from the insurer.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff.

April 1, 2007.

Sec. 2201.204. APPLICABILITY OF CERTAIN REQUIREMENTS FOR LIABILITY INSURERS. A risk retention group authorized to engage in business in this state under Subchapter C or D must participate on the same basis as a liability insurer holding a certificate of authority to engage in the business of insurance in this state in:

- (1) the Texas Windstorm Insurance Association;
- (2) joint underwriting associations;
- (3) mandatory liability and assigned risk pools; and
- (4) residual market facilities.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2201.205. RISK RETENTION GROUP PARTICIPATION IN INSOLVENCY GUARANTY FUND PROHIBITED. A risk retention group may not be required or permitted to join or contribute financially to any insurance insolvency guaranty fund or similar mechanism in this state. A risk retention group, and any of the group's insureds or claimants against an insured, may not receive any benefit from an insurance insolvency guaranty fund or similar mechanism in this state for a claim arising under an insurance policy issued by the group.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2201.206. REQUIRED NOTICE. (a) Any policy issued by a risk retention group must contain in 10-point type on the front page and on the declarations page the following notice:

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.

(b) Each person, firm, partnership, or corporation licensed

under Chapter 981, 4051, or 4056 shall inform each prospective insured on business to be placed with a risk retention group of the notice required by Subsection (a).

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2201.207. PROHIBITED ACTIVITIES. A risk retention group may not:

(1) solicit or sell insurance to any person who is not eligible for membership in the group;

(2) solicit or sell insurance or operate if the group is in a hazardous financial condition or is financially impaired; or

(3) engage in business in this state if an insurer is directly or indirectly a member or owner of the group, unless all of the group members are insurers.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2201.208. INJUNCTIVE RELIEF. An order issued by a United States district court enjoining a risk retention group from soliciting or selling insurance or operating in any state, in all states, or in any territory or possession of the United States on a finding that the group is in a hazardous financial condition, is financially impaired, or is insolvent is enforceable in the courts of this state.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2201.209. PENALTIES. (a) A risk retention group that is authorized to engage in business in this state under Subchapter C or D and that violates this chapter is subject to all sanctions and penalties applicable to an insurer that holds a certificate of authority under Chapters 822 and 861, including revocation of the authority to engage in business in this state.

(b) A risk retention group not chartered in this state that violates this chapter is also subject to any fine or penalty

applicable to a foreign admitted insurer generally, including revocation of the authority to engage in business in this state.

(c) A risk retention group engaging in business in this state that is not authorized to engage in business under Subchapter C or D is considered an unauthorized insurer and is subject to Section 823.457, Subchapters A-P, Chapter 442, and Chapters 101, 441, 804, and 801, other than Section 801.056.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER F. PURCHASING GROUPS

Sec. 2201.251. GENERAL QUALIFICATIONS OF PURCHASING GROUP.

(a) A purchasing group must:

(1) have as one of the group's purposes the purchase of liability insurance on a group basis;

(2) be composed of members whose businesses or activities are similar or related with respect to the liability to which those members are exposed by virtue of any related, similar, or common product, trade, business, operations, premises, or services; and

(3) purchase group liability insurance only for the group's members and only to cover the members' similar or related liability exposure as described in Subdivision (2).

(b) A purchasing group may be domiciled in any state.

(c) Notwithstanding any other provision of this code, a purchasing group composed primarily of employees of a political subdivision, including a county, municipality, or school district, may purchase first-party indemnity coverage, in addition to the liability coverage described in Subsection (a)(3), on a group basis for other risks to which members may be exposed provided that the aggregate coverage limit per group member for the risk does not exceed three percent of the per member coverage limit for liability coverage.

(d) A purchasing group shall notify the commissioner of the group's intent to purchase coverage described by Subsection (c) not later than the 60th day before the date the policy that includes the

coverage is initially issued.

(e) Subsection (d) does not apply to a purchasing group described by Subsection (c) that was providing to its members coverage described by Subsection (c) on January 1, 2013, and has continued to provide that coverage without lapse.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 476 (S.B. 1125), Sec. 1, eff. September 1, 2013.

Sec. 2201.252. DETERMINATION OF LOCATION. (a) For purposes of this subchapter, a purchasing group is considered to be located in the state in which the highest aggregate premiums are in force on the date the group insurance policy is written or renewed. The group's location is ascertained on each placement or renewal of insurance by the group with an insurer or risk retention group.

(b) For purposes of this section, a group insurance policy is considered to be renewed annually.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2201.253. LIMITATIONS ON AUTHORITY. (a) A purchasing group located in this state may not purchase liability insurance from a risk retention group that is not chartered in a state or from an insurer that does not hold a certificate of authority to engage in the business of insurance in this state unless the purchase is effected through a licensed agent acting under Chapter 981.

(b) A purchasing group may not offer insurance policy coverage declared unlawful by the Texas Supreme Court.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2201.254. APPLICATION OF STATE LAW. (a) A purchasing group meeting the criteria established under the Liability Risk Retention Act of 1986 (15 U.S.C. Section 3901 et seq.) is exempt from any law of this state that:

- (1) relates to the creation of groups for the purchase of insurance;
- (2) requires countersignatures;
- (3) prohibits group purchasing; or
- (4) discriminates against a purchasing group or the group's members.

(b) An insurer is exempt from any law of this state that prohibits providing or offering to provide to a purchasing group or the group's members advantages based on the group's or members' loss and expense experience that are not afforded to other persons with respect to rates, policy forms, coverages, or other matters.

(c) A purchasing group is subject to all other applicable laws of this state.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2201.255. NOTICE TO COMMISSIONER; FILING FEE. (a) Before engaging in business in this state, a purchasing group must provide notice to the commissioner. The notice must:

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

(2) specify the lines and classifications of liability insurance the group intends to purchase;

(3) specify the method by which and the persons, if any, through whom insurance will be offered to group members whose risks are located in this state;

(4) identify the insurer from which the group intends to purchase group insurance and the domicile of that insurer;

(5) identify the group's principal place of business and, if ascertainable at the time of filing, the group's location; and

(6) provide other information the commissioner requires to verify that the group qualifies as a purchasing group under Section [2201.251](#).

(b) The commissioner by rule shall impose a filing fee in an amount not to exceed \$100 for filing notice under this section. Fees collected under this subsection shall be deposited

to the credit of the Texas Department of Insurance operating account.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2201.256. REGISTRATION REQUIREMENT; FEES. (a) A purchasing group shall register with and designate the commissioner or other appropriate authority as the group's agent solely for the purpose of receiving service of legal documents or process unless the group:

(1) was domiciled before April 1, 1986, in any state of the United States and is domiciled on and after October 27, 1986, in any state of the United States;

(2) before October 27, 1986, purchased the group's insurance from an insurer authorized to engage in business in any state, and after October 27, 1986, purchased the group's insurance from an insurer authorized to engage in business in any state;

(3) was a purchasing group under the requirements of the Product Liability Risk Retention Act of 1981 (15 U.S.C. Section 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 effective before October 27, 1986.

(b) The commissioner by rule may impose a fee in an amount not to exceed \$50 for each document served on the commissioner and forwarded to the purchasing group. Fees collected under this subsection shall be deposited to the credit of the Texas Department of Insurance operating account.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2201.257. PAYMENT OF PREMIUM TAXES. (a) Premiums paid for coverage of risks located in this state by a purchasing group or any group member are subject to taxation at the same rate and subject to the same interest, fines, and penalties for nonpayment that apply to premiums paid for similar coverage by other insureds.

(b) Title 3 is used to compute applicable tax rates for a

purchasing group or any group member that pays premiums for coverage of risks located in this state to:

(1) an insurer holding a certificate of authority to engage in the business of insurance in this state; or

(2) a risk retention group authorized to engage in business in this state.

(c) To the extent that a purchasing group or group member pays premiums as described by Subsection (b), the insurer or risk retention group receiving those premiums shall remit the tax to the department.

(d) Chapter 225 is used to compute applicable tax rates for a purchasing group or any group member that pays premiums for coverage of risks located in this state to an eligible surplus lines insurer. If a purchasing group or member pays those premiums, the surplus lines agent shall report and remit the tax. If the agent does not remit the tax, the purchasing group shall remit the tax.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2201.258. PURCHASING GROUP PARTICIPATION IN INSOLVENCY GUARANTY FUND PROHIBITED; EXCEPTION. (a) A claim against a purchasing group or a group member may not be paid from any insurance insolvency guaranty fund or similar mechanism in this state.

(b) A purchasing group, a group member, or any claimant against the group or group member may not receive any benefit from an insurance insolvency guaranty fund or similar mechanism in this state for a claim arising under an insurance policy procured through the group unless the policy is underwritten by an insurer authorized to engage in business in this state that, at the time of the policy's issuance:

(1) has capital and surplus of at least \$25 million; or

(2) is a member of a company group that has combined capital and surplus of at least \$25 million.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2201.259. REQUIRED NOTICE. (a) A purchasing group that obtains liability insurance from an insurer or a risk retention group shall provide notice to each group member that has a risk located in this state that the risk is not protected by an insurance insolvency guaranty fund in this state and that the insurer or risk retention group may not be subject to all the insurance laws and rules of this state.

(b) Each person, firm, partnership, or corporation licensed under Chapter 981, 4051, or 4056 shall inform each prospective insured on business to be written through a purchasing group of the notice required by Subsection (a).

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.