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Insurance; risk retention groups

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a statute; and (4) failing to comply with the provisions on the cancellation and renewal of an insurance policy.² In addition, Chapter 470 imposes liability on an insurer for any damages sustained by the insured as a result of an unfair practice.³

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2. 1987 Nev. Stat. ch. 470, sec. 1, at ___ (amending NEV. REV. STAT. § 686A.310). The cancellation of an insurance policy must not be made at midterm, unless the premium was not paid or a provision of the policy was not satisfied. *Id.* § 687B.320. When made by the insurer, the cancellation must give the policyholder adequate instructions to apply for insurance through a risk-sharing plan. *Id.* § 687B.370. When the insurer purports to renew the policy on different terms and the policyholder elects to cancel the policy, the cancellation must provide the insured with a pro rata refund of the paid premium. *Id.* § 687B.350. The cancellation must not be made on the basis of age, residence, race, color, creed, national origin, ancestry or occupation. *Id.* § 687B.390. Renewal of an insurance policy must not be denied by an insurer on the basis of age, residence, race, color, creed, national origin, ancestry or occupation. *Id.*

3. *Id.* at ___ (enacting NEV. REV. STAT. § 686A.310 2) (parent or their authorized representative).

Insurance; risk retention groups

NEV. REV. STAT. § 000.____ (new); §§ 679A.160, 680A.310, 687A.020 (amended).

SB 565 (Committee on Commerce and Labor); 1987 STAT. Ch 559 (*Effective January 1, 1988*)

The Liability Risk Retention Act of 1986 allows individual states¹ to regulate the formation of risk retention² and purchasing

1. 15 U.S.C. § 3901(a)(6) (West 1986) (definition of state).

2. 15 U.S.C. § 3901 (West 1986). A risk retention group is any corporation or association with limited liability whose primary activity consists of assuming and spreading all or any portion of the liability exposure of the group's members. *Id.* The group must be chartered and licensed as a liability insurer and authorized to transact insurance, or before January 1, 1985, was chartered or licensed and authorized to transact insurance and had certified to the commissioner of insurance of at least one state that it satisfied the state's requirements for capitalization. *Id.* Such a group is considered a risk retention group, however, only if it has been engaged in business continuously since January 1, 1987, and only for the purpose of continuing to provide insurance to cover product liability or completed operations liability. *Id.* See 1987 Nev. Stat. ch. 559, sec. 12, at ___ (same as 15 U.S.C. § 3901 (West 1986)). 15 U.S.C. § 3901(a)(3) (West 1982); 1987 Nev. Stat. ch. 559, sec. 10, at ___ (definition of product liability). 15 U.S.C. § 3901(a)(1) (West 1982); 1987 Nev. Stat. ch. 559, sec. 4, at ___ (definition of completed operations liability). 15 U.S.C. § 3901(a)(1) (West 1986) (definition of insurance). The group may not exclude a person from membership in the group solely to provide for members of the group a competitive advantage over an excluded person. 15 U.S.C. § 3901(a)(4)

groups³ as long as the states do not prohibit or regulate the operations of groups not chartered⁴ in the state.⁵ The express purpose of Chapter 559⁶ is to conform Nevada's regulation of risk retention and purchasing groups to the Liability Risk Retention Act of 1986.⁷

Under Chapter 559, a purchasing group that intends to conduct business in Nevada must furnish notice to the commissioner of insurance of Nevada (Commissioner) which: (1) Identifies the state in which the group is domiciled;⁸ (2) specifies the lines and classifications of liability⁹ insurance that the purchasing group intends to purchase;¹⁰ (3) identifies the insurer from which the group intends to purchase its insurance and the domicile of the insurer; (4) identifies the principal place of business of the group; and (5) provides other information so the commissioner may verify the qualifications of the group.¹¹ Chapter 559 provides that a risk retention group seeking to

(West 1986). See 1987 Nev. Stat. ch. 559, sec. 12, at ___ (same as 15 U.S.C. § 3901(a)(4) (West 1986)). The group only may have members who have an ownership interest in the group and who are provided insurance by the risk retention group; or who have as a sole member and sole owner an organization which is owned by persons who are provided insurance by the risk retention group. 15 U.S.C. § 3901(a)(4) (West 1986). See 1987 Nev. Stat. ch. 559, sec. 12, at ___ (same as 15 U.S.C. § 3901(a)(4) (West 1986)). The members must be engaged in businesses or activities similarly related with respect to the liability to which they are exposed. 15 U.S.C. § 3901(a)(4) (West 1986). See 1987 Nev. Stat. ch. 559, sec. 12, at ___ (same as 15 U.S.C. § 3901(a)(4) (West 1986)). That activity may not include the provision of insurance other than liability insurance for assuming and spreading all or any portion of the liability of the members of the group and reinsurance with respect to the liability of any other risk retention group or any member of such group. *Id.*

3. 15 U.S.C. § 3901(a)(5) (West 1986) (definition of a purchasing group). 1987 Nev. Stat. ch. 559, sec. 11, at ___ (definition of a purchasing group).

4. NEV. REV. STAT. § 680A.020 (definition of charter).

5. 15 U.S.C. §§ 3902, 3903, 3905 (West 1982).

6. Chapter 559 adds a new chapter to Title 57. 1987 Nev. Stat. ch. 559, sec. 1, at ____.

7. 1987 Nev. Stat. ch. 559, sec. 2, at _____. See 15 U.S.C. §§ 3901-3904 (West 1982).

8. 1987 Nev. Stat. ch. 559, sec. 5, at ___ (definition of domicile).

9. 1987 Nev. Stat. ch. 559, sec. 7, at ___ (definition of liability). *Id.* sec. 8, at ___ (definition of personal risk liability).

10. A purchasing group must not purchase insurance from a risk group that is not chartered in Nevada or an unauthorized insurer unless the purchase is for surplus lines coverage. 1987 Nev. Stat. ch. 559, sec. 14, at _____. If surplus lines coverage is purchased from an unauthorized insurer a valid agreement between the parties is formed. *Id.* A purchasing group is exempt from any Nevada law that relates to the formation or prohibition of groups for the purchase of insurance, or any law that would discriminate against a purchasing group or the group's members. *Id.* An insurer is exempt from any law of this state that prohibits providing, or offering to provide, to a purchasing group or the members advantages based on their loss and expense experiences not afforded to other persons with respect to rates, policy forms, coverages or other matters. *Id.*

11. 1987 Nev. Stat. ch. 559, sec. 13, at _____. The group also must appoint the commissioner as its agent solely to receive service of legal process except when the purchasing group: (1) was domiciled before April 1, 1986, and on and after October 27, 1986, in any state; (2) before and after October 27, 1986, purchased its insurance from an insurer licensed in any state; (3) was a purchasing group under the requirements of the Product Liability Risk Retention Act of 1981 before October 27, 1986; and (4) does not purchase insurance that was not authorized for an exemption under that act, as in effect before October 27, 1986. *Id.*

be chartered in Nevada must obtain a certificate of authority¹² to transact liability insurance and must comply with all laws, regulations and requirements applicable to the insurers in Nevada.¹³ In addition, Chapter 559 provides that a group must submit to the commissioner a plan of operation,¹⁴ and any revisions of the plan if the group intends to offer any additional lines of liability insurance before the group may transact insurance in the state.¹⁵ Also, a group seeking charter in Nevada is required to provide a statement identifying the following: (1) Each state in which the risk retention group is chartered or licensed as a liability insurer; (2) the date of the group's charter; (3) the group's principal place of business; and (4) such other information as the commissioner requires to verify its qualification as a risk retention group.¹⁶ Moreover, the group must provide a copy of a plan of operation and any revisions, and a statement appointing the commissioner as its agent for service of process.¹⁷ The risk retention group must submit to the commissioner the following: (1) A copy of the group's financial statement; (2) a copy of each examination of the risk retention group; (3) a copy of any audit performed with respect to the risk retention group, upon the request of the commissioner; and (4) any other information the commissioner may require to verify the continuing qualification as a risk retention group.¹⁸ If the commissioner of insurance of the jurisdiction in which the group is chartered does not initiate an examination within 60

12. A certificate of authority must be obtained from the commissioner of insurance in all circumstances except: (1) when the group is investigating, settling or litigating claims under policies written under a former certificate; (2) when insurance was transacted by issuing a policy covering non-resident subjects; (3) when prosecuting or defending lawsuits so long as the policy had been written when a certificate of authority had been granted; (4) when surplus lines of coverages are lawfully written; (5) when litigating the rights relative to investments in Nevada; (6) for reinsurance; and (7) for transactions involving group life insurance, group health insurance or group annuities. NEV. REV. STAT. §§ 680A.060-680A.090.

13. 1987 Nev. Stat. ch. 559, sec. 18, at ____ (risk retention groups are subject to the provisions of Nevada Revised Statutes sections 686A.010-686A.310).

14. A plan of operation is an analysis of the expected activities and results of a risk retention group, including: (1) The coverages, deductibles, limits of coverage, rates and systems of rating classification for each line of insurance the group intends to offer; (2) the 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; and (5) identification of management, underwriting procedures, and policies for investment methods for managerial oversight. 1987 Nev. Stat. ch. 559, sec. 9, at ____.

15. 1987 Nev. Stat. ch. 559, sec. 15, at ____ (enacting NEV. REV. STAT. § 000.____).

16. *Id.* sec. 16, at ____.

17. *Id.* NEV. REV. STAT. § 680A.250 (the appointment of the commissioner as agent to receive process must be irrevocable and remain in force as long as any contract of insurance is effective in the state).

18. 1987 Nev. Stat. ch. 559, sec. 17, at ____.

days after a request by the commissioner, the risk retention group must submit to an examination by the commissioner to determine the group's financial condition.¹⁹

Under Chapter 559, a policy issued by a risk retention group must contain a notice informing the purchaser that the risk retention group may not be subject to all the insurance laws of Nevada.²⁰ A risk retention group is forbidden from: (1) Transacting insurance with any person who is not eligible for membership in the group, conducting any business in Nevada if an insurer is directly or indirectly a member or owner of the group;²¹ (2) transacting insurance or otherwise operating while financially impaired or in a hazardous financial condition;²² or (3) joining or contributing financially to the Nevada insurance guaranty association, or to any similar organization or fund in this state.²³ All premiums paid for coverages within Nevada to a risk retention group must be reported to the commissioner.²⁴ To the extent that agents or brokers²⁵ are not utilized or do not pay the taxes, each risk retention group must pay the taxes on premiums for risks insured in the state.²⁶

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19. *Id.* sec. 20, at _____. The examination must be coordinated to avoid unjustified repetition and conducted in an expeditious manner. *Id.* If financial impairment is discovered after the examination, the risk retention group, which is not chartered in Nevada must comply with a lawful order issued in a proceeding for voluntary dissolution or in a delinquency proceeding commenced by the commissioner of insurance of any state. *Id.* An order issued by a District Court of the United States, entered upon a finding that a risk retention group is in hazardous financial condition, that enjoins the group from conducting operations or transacting insurance in any state, must be enforced by the district courts of Nevada. *Id.*

20. *Id.* sec. 19, at _____. The following notice must be in 10 point type and on the front page and the declaration page:

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 insolvency guaranty funds are not available for your risk retention group.

Id.

21. 1987 Nev. Stat. ch. 559, sec. 21, at ____ (does not apply if all members of the group are insurers).

22. *Id.* sec. 6, at ____ (definition of hazardous financial condition).

23. *Id.* sec. 21, at ____.

24. *Id.* sec. 18, at _____. Risk retention groups are subject to Nevada Revised Statutes sections 680B.010-680B.120 and Nevada Revised Statutes sections 685A.180. *Id.*

25. 1987 Nev. Stat. ch. 559, sec. 22, at _____. Any person acting, or offering to act, as an agent or broker for a purchasing group or a risk retention group transacting insurance in this state is subject to Nevada Revised Statutes sections 683A.020-683A.490. *Id.*

26. 1987 Nev. Stat. ch. 559, sec. 18, at ____ (to the extent brokers are utilized, they shall report and pay the taxes on the premiums for risks that they have placed with or on behalf of a risk retention group not chartered in Nevada).