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

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).

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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


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.
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)
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groups as long as the states do not prohibit or regulate the operations of groups not chartered in the state. The express purpose of Chapter 559 is to conform Nevada's regulation of risk retention and purchasing groups to the Liability Risk Retention Act of 1986.

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; (2) specifies the lines and classifications of liability insurance that the purchasing group intends to purchase; (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. 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.


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 authority to transact liability insurance and must comply with all laws, regulations, and requirements applicable to the insurers in Nevada. In addition, Chapter 559 provides that a group must submit to the commissioner a plan of operation, 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. 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. 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.

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. If the commissioner of insurance of the jurisdiction in which the group is chartered does not initiate an examination within 60 days, the commissioner must do so. If the commissioner does not initiate an examination within 60 days, the commissioner must conduct an examination of the risk retention group. If the commissioner of insurance of the jurisdiction in which the group is chartered does not initiate an examination within 60 days, the commissioner must conduct an examination of the risk retention group.

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.


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 _


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).

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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.\textsuperscript{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.\textsuperscript{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;\textsuperscript{21} (2) transacting insurance or otherwise operating while financially impaired or in a hazardous financial condition;\textsuperscript{22} or (3) joining or contributing financially to the Nevada insurance guaranty association, or to any similar organization or fund in this state.\textsuperscript{23} All premiums paid for coverages within Nevada to a risk retention group must be reported to the commissioner.\textsuperscript{24} To the extent that agents or brokers\textsuperscript{25} 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.\textsuperscript{26}