

**§ 58-22-10. Definitions.**

As used in this Article:

- (1) "Completed operations liability" means liability arising out of the installation, maintenance, or repair of any product at a site that is not owned or controlled by:
  - a. Any person who performs that work; or
  - b. Any person who hires an independent contractor to perform that work;but includes liability for activities that are completed or abandoned before the date of the occurrence giving rise to the liability.
- (2) "Domicile", for purposes of determining the state in which a purchasing group is domiciled, means:
  - a. For a corporation, the state in which the purchasing group is incorporated; and
  - b. For an unincorporated entity, the state of its principal place of business.
- (3) "Hazardous financial condition" means that, based on its present or reasonably anticipated financial condition, a risk retention group is insolvent or, although not yet financially impaired or insolvent, is unlikely to be able:
  - a. To meet obligations to policyholders with respect to known claims and reasonably anticipated claims; or
  - b. To pay other obligations in the normal course of business.
- (4) "Insurance" means primary insurance, excess insurance, reinsurance, surplus lines insurance, and any other arrangement for shifting and distributing risk that is determined to be insurance under the laws of this State.
- (5) "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 such other persons resulting from or arising out of any profit or nonprofit business, trade, product, professional or other services, premises, or operations; or any activity of any state or local government, or any agency or political subdivision thereof. Liability does not include personal risk liability or 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.).
- (6) "Personal risk liability" means liability for damage because of injury to any person, damage to property, or other loss or damage resulting from any personal, familial, or household responsibilities or activities. Personal risk liability does not include liability as defined in subdivision (5) of this section.
- (7) "Plan of operation" or "feasibility study" means an analysis that presents the expected activities and results of a risk retention group including, at a minimum:
  - a. For each state in which the group intends to do business, the coverages, deductibles, coverage limits, rates, and rating classification systems for each kind of insurance the group intends to offer;
  - b. Historical and expected loss experience of the proposed members and national experience of similar exposures;
  - c. Prospective financial statements and projections;

- d. Appropriate opinions by a qualified, independent casualty actuary, including a determination of minimum premium or participation levels required to commence operations and to prevent a hazardous financial condition;
  - e. Identification of management, underwriting and claim procedures, marketing methods, managerial oversight methods, reinsurance agreements, and investment policies;
  - f. Identification of each state in which the group has obtained, or sought to obtain, a charter and license, and a description of its status in each such state;
  - g. Information sufficient to verify that the group's members are engaged in businesses or activities similar or related with respect to the liability to which those members are exposed by virtue of any related, similar, or common business, trade, product, services, premises, or operations; and
  - h. Such other matters that are prescribed by the Commissioner for liability insurance companies authorized by this Chapter.
- (8) "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 such person when the incident giving rise to the claim occurred.
- (9) "Purchasing group" means any group that:
- a. Has as one of its purposes the purchase of liability insurance on a group basis;
  - b. Purchases such insurance only for its group members and only to cover their similar or related liability exposure, as described in sub-subdivision c. of this subdivision;
  - c. Is composed of members whose businesses or activities are similar or related with respect to the liability to which the members are exposed by virtue of any related, similar, or common business, trade, product, services, premises, or operations; and
  - d. Is domiciled in any state.
- (10) "Risk retention group" means any corporation or other limited liability association:
- a. Whose primary activity consists of assuming and spreading all or any portion of the liability exposure of its group members;
  - b. That is organized for the primary purpose of conducting the activity described under sub-subdivision a. of this subdivision;
  - c. That
    - 1. 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
    - 2. 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 that date, had certified to the insurance regulator of at least one state

- that it satisfied the capitalization requirements of such state; except that any such group shall be considered to be a risk retention group only if it has been engaged in business continuously since that date and only for the purpose of continuing to provide insurance to cover product liability or completed operations liability, as such terms were defined in the Product Liability Risk Retention Act of 1981 before the effective date of the Risk Retention Act of 1986;
- d. That does not exclude any person from membership in the group solely to provide for members of such a group a competitive advantage over such person;
  - e. That
    - 1. Has as its [its] owners only persons who comprise the membership of the risk retention group and who are provided insurance by such group; or
    - 2. Has as its sole owner an organization that meets all of the following:
      - I. Its members are only persons who comprise the membership of the risk retention group; and
      - II. Its owners are only persons who comprise the membership of the risk retention group and who are provided insurance by such group;
  - f. Whose members are engaged in businesses or activities similar or related with respect to the liability of which such members are exposed by virtue of any related, similar, or common business trade, product, services, premises, or operations;
  - g. Whose activities do not include the provision of insurance other than:
    - 1. Liability insurance for assuming and spreading all or any portion of the similar or related liability exposure of its group members; and
    - 2. Reinsurance with respect to the similar or related liability exposure of any other risk retention group, or any member of such other group, that is engaged in businesses or activities so that such group or member meets the requirement described in sub-subdivision f. of this subdivision from membership in the risk retention group that provides such reinsurance; and
  - h. The name of which includes the phrase "Risk Retention Group". (1985 (Reg. Sess., 1986), c. 1013, s. 8; 1987, c. 310, s. 1; 1993, c. 452, s. 35; 2001-223, s. 18; 2011-120, s. 10.)