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RISK RETENTION GROUPS/PURCHASING GROUPS

House Bill 4157

Sponsor: Rep. Mary C. Brown
Committee: Insurance
Complete to 2-24-89

A SUMMARY OF HOUSE BILL 4157 AS INTRODUCED 2-14-89

The bill would amend the Insurance Code to create a new Chapter 18, which would regulate risk retention groups and purchasing groups formed under the federal Liability Risk Retention Act of 1986. (That act, in short, permits groups of entities engaged in similar or related activities giving rise to similar risks to form their own insurance companies, which are limited to selling liability coverages to group members.) Generally speaking, the bill applies to three kinds of groups: (1) risk retention groups chartered in the state; (2) risk retention groups chartered in other states but operating in Michigan; and (3) purchasing groups. The bill would take effect July 1, 1989.

Risk Retention Groups

To be chartered in Michigan, a risk retention group would have to obtain a certificate of authority from the insurance commissioner and be licensed as a domestic stock or mutual casualty insurance company. It would have to comply with statutes, rules, regulations, and requirements applicable to those kinds of companies (including tax requirements). In applying for the certificate, the group would have to identify the initial group members and the group's organizers or administrators and describe the amount and nature of its initial capitalization. The group's certificate would be limited to the business of liability insurance. Before it could offer insurance, a group chartered in the state would have to submit for approval by the insurance commissioner a plan of operation or a feasibility study. The submission would have to include, among other things, verification that group members were properly related; a description of coverages, deductibles, coverage limits, rates, and rating classifications; historical or expected loss exposures; financial statements for the past three years or projections for the next three years; opinions by an independent actuary; and identification of management, underwriting and claims procedures; marketing methods, managerial oversight methods, investment policies, and reinsurance agreements. The name under which a group would be chartered would include a brief description of the group's membership followed by the phrase "risk retention group."

Before a risk retention group chartered elsewhere could begin operations in Michigan, the group would have to submit to the insurance commissioner the name of the state in which it was chartered and its place of business, a copy of the plan of operation or feasibility study submitted in the home state, a copy of the financial statement submitted to the home state, a copy of the most recent examination (or any other examination requested) of the group, a copy of any audit or of other information needed to determine the group's financial condition, and a registration form designating the insurance commissioner as the group's agent for the purpose of receiving service of legal documents or process, accompanied by a $25 registration fee. It would be liable for a tax of two percent on direct business for a risk located in the state. The group and its agents or representatives would have to comply with Chapter 20 of the Insurance Code, which deals with unfair and prohibited trade practices. A group chartered out-of-state would have to submit to an examination by the insurance commissioner to determine its financial condition if its home state does not conduct an examination within 60 days of a request for one by Michigan's commissioner. An out-of-state group would have to comply with a lawful order issued in a voluntary dissolution proceeding or a delinquency proceeding begun by the insurance commissioner if there had been a finding of financial impairment. An out-of-state group would be subject to a tax of two percent on direct business for a risk residing or located in the state.

A risk retention group, no matter where chartered, could not join or contribute financially to the property and casualty guaranty association or any similar mechanism in the state, and a group, its insureds, or claimants against its insureds could not receive any benefit from such guaranty associations. (Guaranty associations are supported by the insurance industry to help pay claims in the case of an insolvency by an insurance company.) A risk retention group, however, that provides no-fault liability insurance for cars or trucks would be a participating member in the Michigan Automobile Placement Facility (which is a pool for high-risk drivers supported by auto insurers). Applications and policies issued by a group would have to carry a notice in ten-point type that pointed out that the group might not be subject to all insurance laws and regulations of the state and that insolvency guaranty funds would not be available to the group.

Risk retention groups would be prohibited from: soliciting or selling insurance to a person not eligible for membership in the group; soliciting or selling while in a hazardous financial condition or while financially impaired; having as a member or owner an insurance company, unless the group was entirely made up of insurance companies; and issuing a policy containing coverage of a kind generally prohibited by law or declared unlawful by a final and binding decision of an appellate court. Any group that violated a provision of the new chapter would be subject to fines and penalties applicable to licensed insurers, including revocation of the right to do business.

Purchasing Groups

Before doing business in the state, a purchasing group would have to inform the insurance commissioner of its name and state of domicile, the other states in which it was doing business, the types and classifications of liability insurance it intends to purchase, the companies from which it intends to purchase coverages and the home states of the companies, the method by which and the person through whom insurance will be offered to group members, and the officer responsible for the group. The commissioner could require other information to verify the purchasing

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group was qualified. The group would have to submit a statement of registration designating the commissioner as its agent for the purpose of receiving service of legal documents or process, accompanied by a $25 fee. A purchasing group could not purchase insurance for risks in the state from a risk retention group not chartered here or from an insurance company not authorized in the state unless the transaction is conducted under surplus lines regulations. (Surplus lines coverages are those not available from carriers in the state and are purchased by means of special surplus lines agents.) When a group purchased coverage from a risk retention group or from a unauthorized insurance company, it would have to notify its members in writing that the risk was not protected by an insolvency guaranty fund and that the carrier might not be subject to all of the state's insurance laws and regulations. A group could not purchase insurance providing for a deductible or self-insured retention unless the deductible or self-insured retention was the sole responsibility of each individual member of the purchasing group. Purchasing groups would be subject to premium taxes in the same way other insurance customers are.

In order to be involved in soliciting, negotiating, or procuring liability insurance for a purchasing group or on behalf of a purchasing group, a person or entity would have to meet the licensing requirements in Chapter 12 of the Insurance Code, which deals with agents, solicitors, and counselors, and, for purchases from unauthorized insurers, Chapter 19 of the code, which regulates surplus lines agents and brokers.

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