

40-4103. Requirements of risk retention groups chartered in foreign states; examination by commissioner, when; compliance with order in voluntary dissolution or delinquency proceeding; domestic or foreign chartered groups; taxation; other insurance laws applicable; disclaimer required on policies; prohibited acts. Risk retention groups chartered in states other than this state seeking to do business as a risk retention group in this state shall observe and abide by the laws of this state as follows:

(a) *Notice of operations and designation of commissioner as agent.* Before offering insurance in this state, a risk retention group shall submit to the commissioner:

(1) A statement identifying the state or states in which the risk retention group is chartered and licensed as a liability insurance company, date of chartering, its principal place of business and such other information including information on its membership, as the commissioner of this state may require to verify that the risk retention group is qualified under subsection (k) of K.S.A. 40-4101 and amendments thereto;

(2) a copy of its plan of operations or a feasibility study and revisions of such plan or study submitted to its state of domicile; but the provision relating to the submission of a plan of operation or a feasibility study shall not apply with respect to any line or classification of liability insurance which:

(A) Was defined in the product liability risk retention act of 1981 before October 27, 1986; and

(B) was offered before such date by any risk retention group which had been chartered and operating for not less than three years before such date;

(3) a statement of registration which designates the commissioner as its agent for the purpose of receiving service of legal documents or process; and

(4) a notification fee in the amount of \$250.

(b) *Financial condition.* Any risk retention group doing business in this state shall submit to the commissioner:

(1) A copy of the group's financial statement submitted to its state of domicile, which shall be certified by an independent public accountant and contain a statement of opinion on loss and loss adjustment expense reserves made by a member of the American academy of actuaries or a qualified loss reserve specialist (under criteria established by the national association of insurance commissioners);

(2) a copy of each examination of the risk retention group as certified by the commissioner or public official conducting the examination;

(3) upon request by the commissioner, a copy of any audit performed with respect to the risk retention group; and

(4) such information as may be required to verify its continuing qualification as a risk retention group under subsection (k) of K.S.A. 40-4101 and amendments thereto.

(c) *Taxation.* (1) All premiums paid for coverages within this state to risk retention groups chartered outside this state shall be subject to taxation at the same rate and subject to the same interest, fines and penalties for nonpayment as that provided by K.S.A. 40-246c and amendments thereto. Risk retention groups chartered or licensed in this state shall be taxed in accordance with K.S.A. 40-252, and amendments thereto.

(2) To the extent agents or brokers are utilized, they shall report and pay the taxes for the premiums for risks which they have placed with or on behalf of a risk retention group not chartered in this state.

(3) To the extent agents or brokers are not utilized or fail to pay the tax, each risk retention group shall pay the tax for risks insured within the state. Further, each risk retention group shall report all premiums paid to it for risks insured within the state.

(d) *Compliance with unfair claims settlement practices law.* Any risk retention group, its agents and representatives, shall comply with subsection (9) of K.S.A. 40-2404 and amendments thereto.

(e) *Deceptive, false or fraudulent practices.* Any risk retention group shall comply with the laws of this state regarding deceptive, false or fraudulent acts or practices. However, if the commissioner seeks an injunction regarding such conduct, the injunction shall be obtained from a court of competent jurisdiction.

(f) *Examination regarding financial condition.* Any risk retention group shall submit to an examination in accordance with K.S.A. 40-222 and 40-223, and amendments thereto, by the commissioner to determine its financial condition if the commissioner of the jurisdiction in which the group is chartered has not initiated an examination or does not initiate an examination within 60 days after a request by the commissioner of this state.

(g) *Notice to purchasers.* Any policy issued by a risk retention group shall contain in 10 point type on the front page and the declaration 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.

(h) *Prohibited acts regarding solicitation or sale.* The following acts by a risk retention group are hereby prohibited:

(1) The solicitation or sale of insurance by a risk retention group to any person who is not eligible for membership in such group; and

(2) the solicitation or sale of insurance by, or operation of, a risk retention group that is in a hazardous financial condition or is financially impaired.

(i) *Prohibition on ownership by an insurance company.* No risk retention group shall be allowed to do business in this state if an insurance company is directly or indirectly a retention group all of whose members are insurance companies.

(j) *Prohibited coverage.* No risk retention group may offer insurance policy coverage prohibited by the laws of this state or declared unlawful by the supreme court of the state of Kansas.

(k) *Delinquency proceedings.* A risk retention group not chartered in this state and doing business in this state must comply with a lawful order issued in a voluntary dissolution proceeding or in a delinquency proceeding commenced by a state insurance commissioner if there has been a finding of financial impairment after an examination under subsection (f) of this section.

History: L. 1986, ch. 166, § 3; L. 1987, ch. 172, § 3; L. 1992, ch. 154, § 5; July 1.