

### §6093. Definitions

As used in this Act, unless the context indicates otherwise, the following terms have the following meanings. [PL 1987, c. 481, §3 (NEW).]

**1. Completed operations liability.** "Completed operations liability" means liability arising out of the installation, maintenance or repair of any product at a site which is not owned or controlled by:

A. Any person who performs that work; or [PL 1987, c. 481, §3 (NEW).]

B. Any person who hires an independent contractor to perform that work, but shall include liability for activities which are completed or abandoned before the date of the occurrence giving rise to the liability. [PL 1987, c. 481, §3 (NEW).]

[PL 1987, c. 481, §3 (NEW).]

**2. Domicile.** "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 [PL 1987, c. 481, §3 (NEW).]

B. For an unincorporated entity, the state of its principal place of business. [PL 1987, c. 481, §3 (NEW).]

[PL 1987, c. 481, §3 (NEW).]

**3. Hazardous financial condition.** "Hazardous financial condition" means that, based on its present or reasonably anticipated financial condition, a risk retention group, 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 [PL 1987, c. 481, §3 (NEW).]

B. To pay other obligations in the normal course of business. [PL 1987, c. 481, §3 (NEW).]

[PL 1987, c. 481, §3 (NEW).]

**4. Impairment.** "Impairment," as to a risk retention group, exists when:

A. If a stock corporation, the sum of the group's liabilities and paid-in capital stock exceeds its assets; [PL 1987, c. 481, §3 (NEW).]

B. If a mutual company, the sum of its liabilities and required minimum basic surplus exceeds its assets; and [PL 1987, c. 481, §3 (NEW).]

C. If other than a stock or mutual company, the sum of liabilities and any fund balance equal to the amount of basic surplus required of a mutual company exceeds its assets. [PL 1987, c. 481, §3 (NEW).]

[PL 1987, c. 481, §3 (NEW).]

**5. Insurance.** "Insurance" means primary insurance, excess insurance, reinsurance, surplus lines insurance and any other arrangement for shifting and distributing risk which is determined to be insurance under the laws of this State.

[PL 1987, c. 481, §3 (NEW).]

**6. Liability.** "Liability" means:

A. 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:

(1) Any business, whether profit or nonprofit, trade, product, services, including professional services, premises or operations; or

(2) Any activity of any state or local government or any agency or political subdivision of state or local government; and [PL 1987, c. 481, §3 (NEW).]

B. Does not include personal risk liability and an employer's liability with respect to its employees other than legal liability under the Federal Employers' Liability Act, United States Code, Title 45, Section 51, et seq. [PL 1987, c. 481, §3 (NEW).]  
[PL 1987, c. 481, §3 (NEW).]

**7. Personal risk liability.** "Personal risk liability" means liability for damages because of injury to any person, damage to property or other loss or damage resulting from any personal, familial or household responsibilities or activities, rather than from responsibilities or activities referred to in subsection 6.  
[PL 1987, c. 481, §3 (NEW).]

**8. Plan of operation or feasibility study.** "Plan of operation or feasibility study" means an analysis which presents the expected activities and results of a risk retention group, including, at a minimum:

A. Information sufficient to verify that its members are engaged in businesses or activities similar or related with respect to the liability to which the members are exposed by virtue of any related, similar or consumer business, trade, product, services, premises or operation; [PL 1987, c. 481, §3 (NEW).]

B. The coverages, deductibles, coverage limits, rates and rating classification systems for each line of insurance the group intends to offer; [PL 1987, c. 481, §3 (NEW).]

C. Historical and expected loss experience, to the extent available, of the proposed members and national experience of similar exposures; [PL 1987, c. 481, §3 (NEW).]

D. Pro forma financial statements and projections; [PL 1987, c. 481, §3 (NEW).]

E. 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; [PL 1987, c. 481, §3 (NEW).]

F. Identification of management, underwriting and claim procedures, marketing methods, managerial oversight methods and investment policies; and [PL 1987, c. 481, §3 (NEW).]

G. Such other matters as may be prescribed by the superintendent for liability insurance companies authorized by the insurance laws of the state in which the risk retention group is chartered. [PL 1987, c. 481, §3 (NEW).]

[PL 1987, c. 481, §3 (NEW).]

**9. Product liability.** "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 a person when the incident giving rise to the claim occurred.

[PL 1987, c. 481, §3 (NEW).]

**10. Product Liability Risk Retention Act of 1981.** "Product Liability Risk Retention Act of 1981" means the United States Public Law 97-45, the United States Code, Title 15, Section 3901, et seq.

[PL 1987, c. 481, §3 (NEW).]

**11. Purchasing group.** "Purchasing group" means any group which:

- A. Has, as one of its purposes, the purchase of liability insurance on a group basis; [PL 1987, c. 481, §3 (NEW).]
  - B. Purchases such insurance only for its group members and only to cover their similar or related liability exposure, as described in paragraph C; [PL 1987, c. 481, §3 (NEW).]
  - C. Is composed of members whose businesses or activities are similar or related with respect to the liability to which members are exposed by virtue of any related, similar or common business, trade, product, services, premises or operations; and [PL 1987, c. 481, §3 (NEW).]
  - D. Is domiciled in any state. [PL 1987, c. 481, §3 (NEW).]
- [PL 1987, c. 481, §3 (NEW).]

**12. Risk Retention Amendments of 1986.** "Risk Retention Amendments of 1986" means United States Public Law 99-563, United States Code, Title 15, Section 3901, et seq. [RR 2009, c. 2, §71 (COR).]

**13. Risk retention group.** "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; [PL 1987, c. 481, §3 (NEW).]
- B. Which is organized for the primary purpose of conducting the activity described under paragraph A; [PL 1987, c. 481, §3 (NEW).]
- C. Which:
  - (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 such date, had certified to the insurance superintendent of at least one state, which certification was accepted, that it satisfied the capitalization requirements of that 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 date of the enactment of the Risk Retention Amendments of 1986; [PL 1987, c. 481, §3 (NEW).]
- D. Which does not exclude any person from membership in the group solely to provide for members of such a group a competitive advantage over such a person; [PL 1987, c. 481, §3 (NEW).]
- E. Which:
  - (1) Has, as 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 which:
    - (a) Has as its members only persons who comprise the membership of the risk retention group; and
    - (b) Has as its owners only persons who comprise the membership of the risk retention group and who are provided insurance by such groups; [PL 1987, c. 481, §3 (NEW).]
- F. Whose members are engaged in businesses or activities similar or related, with respect to the liability of which those members are exposed by virtue of any related, similar or common business, trade, product, services, premises or operations; [PL 1987, c. 481, §3 (NEW).]

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 liability of its group members; and
- (2) Reinsurance with respect to the liability of any other risk retention group, or any members of such other group, which is engaged in businesses or activities so that this group or member meets the requirement described in paragraph F for membership in the risk retention group which provides that reinsurance; and [PL 1987, c. 481, §3 (NEW).]

H. The name of which includes the phrase "Risk Retention Group." [PL 1987, c. 481, §3 (NEW).]  
[PL 1987, c. 481, §3 (NEW).]

**14. State.** "State" means any state of the United States or the District of Columbia.  
[PL 1987, c. 481, §3 (NEW).]

**15. Superintendent.** "Superintendent" means the Superintendent of Insurance of this State or the commissioner, director or superintendent of insurance in any other state.  
[PL 1987, c. 481, §3 (NEW).]

#### SECTION HISTORY

PL 1987, c. 481, §3 (NEW). RR 2009, c. 2, §71 (COR).

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