

Superseded 5/10/2016

31A-15-204 Risk retention groups not chartered in this state -- Designation of commissioner as agent -- Compliance with unfair claims settlement practices act -- Deceptive, false, or fraudulent practices -- Examination regarding financial condition -- Prohibitions -- Penalties -- Operation prior to enactment of this part.

- (1) Risk retention groups chartered and licensed in other states and seeking to do business as a risk retention group in this state shall comply with the following:
 - (a) Before offering insurance in this state a risk retention group shall submit to the commissioner:
 - (i) a statement identifying the states in which the group is chartered and licensed as a liability insurance company, its charter date, its principal place of business, and any other information, including information on its membership, the commissioner may require to verify that the group is a qualified risk retention group as defined in Subsection 31A-15-202(11); and
 - (ii) a copy of its plan of operations or feasibility study and revisions of the plan or study submitted to the state in which the risk retention group is chartered and licensed, except a plan or study is not required for any line or classification of liability insurance that:
 - (A) was defined in the Product Liability Risk Retention Act of 1981 before October 27, 1986; and
 - (B) was offered before that date by any risk retention group that had been chartered and operating for not less than three years before that date.
 - (b) The risk retention group shall submit to the commissioner a copy of any revision to its plan or study required by Subsection 31A-15-203(2) at the same time it submits the revision of its chartering state.
 - (c) The risk retention group shall submit, on a form approved by the commissioner, a statement of registration and a notice designating the commissioner as agent for the purpose of receiving service of legal documents or process.
 - (d) The risk retention group shall pay annual license fees required by Section 31A-3-103.
- (2) Any risk retention group doing business in this state shall submit to the commissioner:
 - (a) a copy of the group's financial statement submitted to the state in which the risk retention group is chartered and licensed, which shall be certified by an independent public accountant and shall contain a statement of opinion on loss and loss adjustment expense reserves made by a member of the American Academy of Actuaries or a loss reserve specialist qualified under criteria approved by the commissioner;
 - (b) a copy of each examination of the risk retention group as certified by the commissioner or public official conducting the examination;
 - (c) if the commissioner requests, a copy of any information or document pertaining to any outside audit performed with respect to the risk retention group; and
 - (d) any other information required to verify the group's continuing qualification as a risk retention group within the definition in Subsection 31A-15-202(11).
- (3)
 - (a) Each risk retention group shall pay premium taxes and taxes on premiums of direct business for risks resident or located within this state, and shall report to the Utah State Tax Commission the net premiums written for risks resident or located within this state. Each risk retention group shall be subject to taxation, and any applicable fines and penalties related to taxation, on the same basis as a foreign admitted insurer.
 - (b) To the extent licensed producers are utilized pursuant to Section 31A-15-212, they shall report to the commissioner the premiums for direct business for all risks resident or located

within this state that the producers have placed with, or on behalf of, a risk retention group not chartered in this state.

- (c) To the extent that insurance producers are utilized pursuant to Section 31A-15-212 they shall keep a complete and separate record of all policies procured from each risk retention group. The record shall be open to examination by the commissioner, as provided under Section 31A-23a-412. These records shall include the following for each policy and each kind of insurance provided under each policy:
- (i) the limit of liability;
 - (ii) the time period covered;
 - (iii) the effective date;
 - (iv) the name of the risk retention group that issued the policy;
 - (v) the gross premium charged;
 - (vi) the amount of any returned premiums; and
 - (vii) additional information required by the insurance commissioner.
- (4) Each risk retention group and its agents and representatives shall comply with the Unfair Claims Settlement Practices Act, including Section 31A-15-207, Title 31A, Chapter 26, Part 3, Claim Practices, and any other provision of law relating to claims settlement practices.
- (5) Each risk retention group shall comply with the laws of this state regarding deceptive, false, and fraudulent acts, practices regulated under Title 31A, Chapter 23a, Part 4, Marketing Practices, and any other provision of law relating to deceptive, false, or fraudulent practices. The commissioner may only obtain an injunction regarding the conduct described in this subsection from a court of competent jurisdiction.
- (6) If the commissioner of the jurisdiction in which the group is chartered and licensed has not initiated an examination or does not initiate an examination within 60 days after a request by the commissioner of this state, the risk retention group shall submit to an examination by the commissioner of this state to determine its financial condition. Any examination conducted under this subsection shall be coordinated to avoid unjustified repetition and shall be conducted in an expeditious manner and in accordance with the NAIC's Examiner Handbook.
- (7) Each application form for insurance from a risk retention group and each policy and certificate issued by a risk retention group shall contain the following notice in ten-point type on its front and declaration pages:

"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."

- (8) The following acts by a risk retention group are prohibited:
- (a) the solicitation or sale of insurance by a risk retention group to any person who is not eligible for membership in the group; and
 - (b) the solicitation or sale of insurance by, or operation of, a risk retention group that is in hazardous financial condition or financially impaired.
- (9) A risk retention group may not do business in this state if an insurance company is directly or indirectly a member or owner of the risk retention group, unless all members of the group are insurance companies.
- (10) The terms of any insurance policy issued by a risk retention group may not provide, or be construed to provide, coverage prohibited generally by statute of this state or declared unlawful by the Utah Supreme Court.
- (11) A risk retention group not chartered in this state and doing business in this state shall comply with a lawful order issued in a voluntary dissolution proceeding or in a delinquency proceeding

commenced by any state's insurance commissioner if there has been a finding of financial impairment after an examination under Subsection (6).

(12) A risk retention group that violates any provision of this part is subject to fines and penalties applicable to licensed insurers generally, including revocation of its right to do business in this state.

(13) In addition to complying with the requirements of this section, each risk retention group operating in this state before the effective date of this part shall comply with Subsection (1)(a) within 30 days after the effective date of this part.