

SENATE BILL 78

C4, C3

8lr0025

(PRE-FILED)

By: **Chair, Finance Committee (By Request – Departmental – Maryland Insurance Administration)**

Requested: September 20, 2017

Introduced and read first time: January 10, 2018

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Insurance – Risk Retention Groups – Revisions**

3 FOR the purpose of requiring certain domestic risk retention groups to implement certain
4 governance standards; requiring the boards of directors of certain risk retention
5 groups to have a majority of independent directors; establishing certain standards
6 concerning whether a director is independent; requiring the risk retention group to
7 annually disclose the board's determinations regarding whether a director is
8 independent to the Maryland Insurance Commissioner; providing that a person is
9 deemed to have a material relationship with a certain risk retention group under
10 certain circumstances; providing that certain persons are not independent until after
11 a certain period of time after certain events; prohibiting a material service provider
12 contract with a certain risk retention group from having a term exceeding a certain
13 number of years; requiring a certain material service provider contract to contain
14 certain provisions; providing that a service provider contract is deemed to be
15 material under certain circumstances; prohibiting, except under certain
16 circumstances, a certain risk retention group from entering into a service provider
17 contract that involves a material relationship; requiring certain boards of directors
18 to adopt a written policy in the plan of operation that includes certain provisions;
19 requiring certain risk retention groups to establish a certain audit committee with a
20 written charter that defines the committee's purposes; authorizing a
21 nonindependent board member to participate in the activities of the audit committee
22 under certain circumstances and prohibiting the member from being a member of
23 the audit committee; authorizing the Commissioner to waive the requirement to
24 establish a certain audit committee under certain circumstances; requiring certain
25 boards of directors to adopt and disclose in a certain manner certain governance
26 standards; requiring certain boards of directors to adopt and disclose in a certain
27 manner a code of business conduct and ethics for certain individuals; requiring
28 certain boards of directors to promptly disclose certain waivers of the code of business
29 conduct and ethics for certain individuals; requiring certain individuals to promptly

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 notify the Commissioner of certain material noncompliance with certain governance
2 standards; requiring certain risk retention groups not chartered in the State to
3 submit a copy of any material revision to their plans of operation or feasibility studies
4 within a certain period of time; defining certain terms; altering a certain definition;
5 making stylistic changes; and generally relating to risk retention groups.

6 BY repealing and reenacting, with amendments,

7 Article – Insurance

8 Section 25–101 through 25–103

9 Annotated Code of Maryland

10 (2017 Replacement Volume)

11 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
12 That the Laws of Maryland read as follows:

13 **Article – Insurance**

14 25–101.

15 (a) In this subtitle the following words have the meanings indicated.

16 **(B) “BOARD OF DIRECTORS” OR “BOARD” MEANS THE GOVERNING BODY OF**
17 **A RISK RETENTION GROUP ELECTED BY THE SHAREHOLDERS OR MEMBERS OF THE**
18 **RISK RETENTION GROUP TO ESTABLISH POLICY, ELECT OR APPOINT OFFICERS AND**
19 **COMMITTEES, AND MAKE OTHER GOVERNING DECISIONS.**

20 **[(b)] (C) (1) “Completed operations liability” means liability arising out of the**
21 **installation, maintenance, or repair of a product at a site that is not owned or controlled**
22 **by:**

23 (i) a person that performs that work; or

24 (ii) a person that hires an independent contractor to perform that
25 work.

26 (2) “Completed operations liability” includes liability for activities that are
27 completed or abandoned before the date of the occurrence giving rise to the liability.

28 **(D) “DIRECTOR” MEANS AN INDIVIDUAL DESIGNATED IN THE ARTICLES OF**
29 **INCORPORATION OF A RISK RETENTION GROUP, OR DESIGNATED, ELECTED, OR**
30 **APPOINTED BY ANY OTHER MANNER, NAME, OR TITLE TO ACT AS A DIRECTOR OF THE**
31 **RISK RETENTION GROUP.**

32 **[(c)] (E) “Domicile” means, for the purpose of determining the state in which a**
33 **purchasing group has its domicile:**

1 (1) the state of incorporation of a purchasing group that is a corporation;
2 or

3 (2) the state of the principal place of business of a purchasing group that is
4 an unincorporated entity.

5 [(d)] (F) “Hazardous financial condition” means the condition of a risk retention
6 group in which, based on its present or reasonably anticipated financial condition, the risk
7 retention group:

8 (1) is not yet financially impaired or insolvent; but

9 (2) is unlikely to be able to:

10 (i) meet obligations to policyholders with respect to known claims
11 and reasonably anticipated claims; or

12 (ii) pay other obligations in the normal course of business.

13 (G) “IMMEDIATE FAMILY MEMBER” MEANS AN INDIVIDUAL’S:

14 (1) SPOUSE;

15 (2) CHILD;

16 (3) CHILD’S SPOUSE;

17 (4) PARENT;

18 (5) SPOUSE’S PARENT;

19 (6) SIBLING; OR

20 (7) SIBLING’S SPOUSE.

21 [(e)] (H) “Insurance” means primary insurance, excess insurance, reinsurance,
22 surplus lines insurance, and any other arrangement for shifting and distributing risk that
23 is determined to be insurance under the laws of the State.

24 [(f)] (I) (1) “Liability” means legal liability for damages, including costs of
25 defense, legal costs and fees, and other claims expenses, because of injuries to persons,
26 damage to their property, or other damage or loss to those persons, resulting from or arising
27 out of:

28 (i) a business, whether profit or nonprofit, trade, products, services,

1 including professional services, premises, or operations; or

2 (ii) an activity of a state or local government, or an agency or political
3 subdivision of a state or local government.

4 (2) "Liability" does not include:

5 (i) personal risk liability, which is liability for damages because of
6 injury to a person, damage to property, or other damage or loss resulting from personal,
7 familial, or household responsibilities or activities; or

8 (ii) the liability of an employer with respect to its employees other
9 than legal liability under the federal Employers' Liability Act.

10 [(g)] (J) "Plan of operation or feasibility study" means an analysis that presents
11 the expected activities and results of a risk retention group including, at a minimum:

12 (1) information sufficient to verify that the members of the risk retention
13 group are engaged in businesses or activities that are similar or related with respect to the
14 liability to which the members are exposed by virtue of related, similar, or common
15 business, trade, products, services, premises, or operations;

16 (2) for each state in which the risk retention group intends to operate, the
17 coverages, deductibles, coverage limits, rates, and rating classification systems for each line
18 of insurance that the risk retention group intends to offer;

19 (3) historical and expected loss experience of the proposed members and
20 national experience of similar exposures, to the extent this experience is reasonably
21 available;

22 (4) pro forma financial statements and projections;

23 (5) appropriate opinions by a qualified, independent casualty actuary,
24 including a determination of minimum premium or participation levels required to begin
25 operations and to prevent a hazardous financial condition;

26 (6) identification of management, underwriting and claims procedures,
27 marketing methods, managerial oversight methods, investment policies, and reinsurance
28 agreements;

29 (7) identification of each state in which the risk retention group has
30 obtained or sought to obtain a charter and license, and a description of its status in each
31 state identified; and

32 (8) any other matters required by the commissioner of the state in which
33 the risk retention group is chartered for liability insurance companies authorized by the
34 insurance laws of that state.

1 **[(h)] (K)** (1) “Product liability” means liability for damages because of
2 personal injury, death, emotional harm, consequential economic damage, or property
3 damage, including damages resulting from the loss of use of the property, arising out of the
4 manufacture, design, importation, distribution, packaging, labeling, lease, or sale of a
5 product.

6 (2) “Product liability” does not include the liability of a person for damages
7 if the product involved was in the possession of the person when the incident giving rise to
8 the claim occurred.

9 **[(i)] (L)** “Purchasing group” means a group that:

10 (1) has as a purpose the purchase of liability insurance on a group basis;

11 (2) purchases liability insurance only for its group members and only to
12 cover the similar or related liability exposure of the group members;

13 (3) is composed of members engaged in businesses or activities that are
14 similar or related with respect to the liability to which the members are exposed by virtue
15 of related, similar, or common business, trade, products, services, premises, or operations;
16 and

17 (4) has its domicile in a state.

18 **[(j)] (M)** “Risk retention group” means a corporation or other limited liability
19 association:

20 (1) that is formed under the laws of a state, Bermuda, or the Cayman
21 Islands;

22 (2) the primary activity of which consists of assuming and spreading all or
23 part of the liability exposure of its group members;

24 (3) that is organized for the primary purpose of conducting the activity
25 described in item (2) of this subsection;

26 (4) that:

27 (i) is chartered and licensed as a liability insurance company and
28 authorized to engage in the insurance business under the laws of a state; or

29 (ii) 1. on or before December 31, 1984, was chartered or licensed
30 and authorized to engage in the insurance business under the laws of Bermuda or the
31 Cayman Islands and, on or before December 31, 1984, had certified to the insurance
32 commissioner of at least one state that it satisfied the capitalization requirements of that
33 state; and

1 2. has been engaged in business continuously since January
2 1, 1985 and only for the purpose of continuing to provide insurance to cover product liability
3 or completed operations liability;

4 (5) that does not exclude a person from membership in the group solely to
5 provide for members of the group a competitive advantage over that person;

6 (6) that:

7 (i) has as its members only persons that have an ownership interest
8 in the group and has as its owners only persons that are members of the group and are
9 provided insurance by the group; or

10 (ii) has as its sole owner an organization that:

11 1. has as its members only persons that are members of the
12 group; and

13 2. has as its owners only persons that are members of the
14 group and are provided insurance by the group;

15 (7) the members of which are engaged in businesses or activities that are
16 similar or related with respect to the liability to which the members are exposed by virtue
17 of related, similar, or common business, trade, products, services, premises, or operations;

18 (8) the activities of which do not include the provision of insurance other
19 than:

20 (i) liability insurance for assuming and spreading all or part of the
21 liability of its group members; and

22 (ii) reinsurance with respect to the liability of another risk retention
23 group, or a member of the other risk retention group, that is engaged in businesses or
24 activities so that the risk retention group or member meets the requirement of item (7) of
25 this subsection of membership in the risk retention group that provides the reinsurance;
26 and

27 (9) the name of which includes the phrase “risk retention group”.

28 **[(k)] (N) (1) [“State”] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS**
29 **SUBSECTION, “STATE” means a state of the United States or the District of Columbia.**

30 **(2) WHEN CAPITALIZED, “STATE” MEANS MARYLAND.**

1 (a) A risk retention group that seeks to be chartered in the State:

2 (1) shall be chartered and licensed as a liability insurance company in
3 conformance with all insurance laws and regulations of the State; and

4 (2) except as otherwise provided in this subtitle, shall comply with:

5 (i) all the laws, regulations, and requirements applicable to insurers
6 chartered and licensed in the State; and

7 (ii) the requirements of § 25–103 of this subtitle, to the extent that
8 those requirements are not a limitation on the laws, regulations, or requirements of the
9 State.

10 (b) (1) Before a risk retention group may offer insurance in a state, the risk
11 retention group shall submit a plan of operation or feasibility study to the Commissioner
12 for approval.

13 (2) Within 10 days [of] **AFTER** a change to an item of the plan of operation
14 or feasibility study, the risk retention group shall submit to the Commissioner an
15 appropriate revision of the plan of operation or feasibility study.

16 (3) A risk retention group may not offer additional lines of liability
17 insurance in this State or in another state until a revision of the plan of operation or
18 feasibility study is approved by the Commissioner.

19 (c) When a risk retention group files an application for charter, the risk retention
20 group shall provide to the Commissioner the following information:

21 (1) the name of the risk retention group;

22 (2) the identity of the initial members of the risk retention group;

23 (3) the identity of the individuals who organized the risk retention group,
24 or who will provide administrative services or otherwise influence or control the activities
25 of the risk retention group;

26 (4) the amount and nature of initial capitalization;

27 (5) the coverages to be afforded; and

28 (6) the states in which the risk retention group intends to operate.

29 (d) (1) On receipt of the information required by subsection (c) of this section,
30 the Commissioner shall forward the information to the National Association of Insurance
31 Commissioners.

1 (2) Providing notification to the National Association of Insurance
2 Commissioners is in addition to and may not be sufficient to satisfy the other requirements
3 of this subtitle.

4 **(E) (1) THE BOARD OF DIRECTORS OF THE RISK RETENTION GROUP**
5 **SHALL HAVE A MAJORITY OF INDEPENDENT DIRECTORS.**

6 **(2) IF THE RISK RETENTION GROUP IS A RECIPROCAL:**

7 **(I) THE ATTORNEY-IN-FACT SHALL BE REQUIRED TO ADHERE**
8 **TO THE SAME STANDARDS REGARDING INDEPENDENCE OF OPERATION AND**
9 **GOVERNANCE THAT ARE IMPOSED ON THE RISK RETENTION GROUP'S BOARD OF**
10 **DIRECTORS OR SUBSCRIBERS ADVISORY COMMITTEE; AND**

11 **(II) TO THE EXTENT PERMISSIBLE UNDER STATE LAW, SERVICE**
12 **PROVIDERS OF A RECIPROCAL RISK RETENTION GROUP:**

13 1. SHALL CONTRACT WITH THE RISK RETENTION
14 GROUP; AND

15 2. MAY NOT CONTRACT WITH THE ATTORNEY-IN-FACT.

16 **(3) (I) A DIRECTOR QUALIFIES AS INDEPENDENT WHEN THE**
17 **BOARD OF DIRECTORS AFFIRMATIVELY DETERMINES THAT THE DIRECTOR HAS NO**
18 **MATERIAL RELATIONSHIP WITH THE RISK RETENTION GROUP.**

19 **(II) A PERSON THAT IS A DIRECT OR INDIRECT OWNER OF OR**
20 **SUBSCRIBER IN THE RISK RETENTION GROUP, AS CONTEMPLATED BY 15 U.S.C. §**
21 **3901(A)(4)(E)(II), THE FEDERAL LIABILITY RISK RETENTION ACT, OR THAT IS AN**
22 **OFFICER, A DIRECTOR, OR AN EMPLOYEE OF THE OWNER OR INSURED, IS**
23 **CONSIDERED TO BE INDEPENDENT UNLESS SOME OTHER POSITION OF THE**
24 **OFFICER, DIRECTOR, OR EMPLOYEE CONSTITUTES A MATERIAL RELATIONSHIP.**

25 **(III) THE RISK RETENTION GROUP ANNUALLY SHALL DISCLOSE**
26 **THE BOARD'S DETERMINATIONS TO THE COMMISSIONER.**

27 **(4) (I) FOR PURPOSES OF THIS SECTION, A PERSON IS DEEMED TO**
28 **HAVE A MATERIAL RELATIONSHIP WITH A RISK RETENTION GROUP IF ANY OF THE**
29 **FOLLOWING RECEIVE, IN ANY ONE 12-MONTH PERIOD, COMPENSATION, PAYMENT,**
30 **OR ANY OTHER ITEM OF VALUE GREATER THAN OR EQUAL TO THE THRESHOLD**
31 **VALUE DESCRIBED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH:**

32 1. THE PERSON;

1 2. A MEMBER OF THE PERSON’S IMMEDIATE FAMILY;

2 3. ANY BUSINESS WITH WHICH THE PERSON IS
3 AFFILIATED FROM THE RISK RETENTION GROUP; OR

4 4. A CONSULTANT OR SERVICE PROVIDER TO THE RISK
5 RETENTION GROUP.

6 (II) THE THRESHOLD VALUE FOR DETERMINING WHETHER
7 RECEIPT OF COMPENSATION, PAYMENT, OR ANY OTHER ITEM OF VALUE UNDER
8 SUBPARAGRAPH (I) OF THIS PARAGRAPH DEMONSTRATES A MATERIAL
9 RELATIONSHIP IS THE GREATER OF:

10 1. 5% OF THE RISK RETENTION GROUP’S GROSS
11 WRITTEN PREMIUM FOR THE 12-MONTH PERIOD; OR

12 2. 2% OF ITS SURPLUS, AS MEASURED AT THE END OF
13 ANY FISCAL QUARTER FALLING IN THE 12-MONTH PERIOD.

14 (III) IN ADDITION TO THE STANDARD SET UNDER
15 SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE BOARD OF DIRECTORS MAY
16 DETERMINE THAT ANY OTHER RELATIONSHIP OF THE PERSON TO THE RISK
17 RETENTION GROUP IS A MATERIAL RELATIONSHIP.

18 (IV) THE PERSON OR IMMEDIATE FAMILY MEMBER OF THE
19 PERSON IS NOT INDEPENDENT UNTIL 1 YEAR AFTER THE COMPENSATION, PAYMENT,
20 OR OTHER ITEM OF VALUE DESCRIBED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH
21 RECEIVED FROM THE RISK RETENTION GROUP FALLS BELOW THE APPLICABLE
22 THRESHOLD.

23 (V) A DIRECTOR WHO IS AFFILIATED WITH OR EMPLOYED IN A
24 PROFESSIONAL CAPACITY BY A PRESENT OR FORMER INTERNAL OR EXTERNAL
25 AUDITOR OF THE RISK RETENTION GROUP IS NOT CONSIDERED INDEPENDENT
26 UNTIL 1 YEAR AFTER THE END OF THE AFFILIATION, EMPLOYMENT, OR AUDITING
27 RELATIONSHIP.

28 (VI) A DIRECTOR OR AN IMMEDIATE FAMILY MEMBER OF A
29 DIRECTOR WHO IS EMPLOYED AS AN EXECUTIVE OFFICER OF ANOTHER COMPANY
30 WHERE ANY OF THE RISK RETENTION GROUP’S PRESENT EXECUTIVES SERVE ON THE
31 BOARD OF DIRECTORS IS NOT CONSIDERED INDEPENDENT UNTIL 1 YEAR AFTER THE
32 END OF THE SERVICE OR THE EMPLOYMENT RELATIONSHIP.

33 (F) (1) IN THIS SUBSECTION, “SERVICE PROVIDER” INCLUDES:

- 1 **(I) A CAPTIVE MANAGER;**
- 2 **(II) AN AUDITOR;**
- 3 **(III) AN ACCOUNTANT;**
- 4 **(IV) AN ACTUARY;**
- 5 **(V) AN INVESTMENT ADVISOR;**
- 6 **(VI) A LAWYER OTHER THAN DEFENSE COUNSEL THAT THE RISK**
7 **RETENTION GROUP RETAINS TO DEFEND CLAIMS, UNLESS THE AMOUNT OF FEES**
8 **PAID TO THE LAWYER IS MATERIAL UNDER SUBSECTION (E)(4) OF THIS SECTION;**
9 **AND**
- 10 **(VII) A MANAGING GENERAL UNDERWRITER OR OTHER PARTY**
11 **RESPONSIBLE FOR UNDERWRITING, DETERMINING RATES, COLLECTING PREMIUM,**
12 **ADJUSTING AND SETTLING CLAIMS, OR PREPARING FINANCIAL STATEMENTS.**
- 13 **(2) A MATERIAL SERVICE PROVIDER CONTRACT WITH THE RISK**
14 **RETENTION GROUP:**
- 15 **(I) MAY NOT HAVE A TERM EXCEEDING 5 YEARS;**
- 16 **(II) SHALL REQUIRE THE ISSUANCE AND RENEWAL OF THE**
17 **CONTRACT TO BE APPROVED BY A MAJORITY OF THE RISK RETENTION GROUP'S**
18 **INDEPENDENT DIRECTORS;**
- 19 **(III) SHALL PROVIDE THAT THE RISK RETENTION GROUP'S**
20 **BOARD OF DIRECTORS SHALL HAVE THE RIGHT TO TERMINATE ANY SERVICE**
21 **PROVIDER CONTRACT, AUDIT CONTRACT, OR ACTUARIAL CONTRACT AT ANY TIME**
22 **FOR CAUSE AFTER PROVIDING ADEQUATE NOTICE AS DEFINED IN THE CONTRACT;**
23 **AND**
- 24 **(IV) SHALL BE DEEMED MATERIAL IF THE AMOUNT TO BE PAID**
25 **FOR THE CONTRACT IS GREATER THAN OR EQUAL TO THE GREATER OF:**
- 26 1. **5% OF THE RISK RETENTION GROUP'S ANNUAL GROSS**
27 **WRITTEN PREMIUM; OR**
- 28 2. **2% OF ITS SURPLUS.**

1 **(3) A RISK RETENTION GROUP MAY NOT ENTER INTO A SERVICE**
2 **PROVIDER CONTRACT THAT INVOLVES A RELATIONSHIP THAT IS MATERIAL UNDER**
3 **SUBSECTION (E)(4) OF THIS SECTION UNLESS:**

4 **(I) THE RISK RETENTION GROUP NOTIFIES THE**
5 **COMMISSIONER IN WRITING OF ITS INTENTION TO ENTER INTO THE TRANSACTION**
6 **AT LEAST 30 DAYS BEFORE THE TRANSACTION; AND**

7 **(II) THE COMMISSIONER HAS NOT DISAPPROVED THE**
8 **TRANSACTION WITHIN THAT PERIOD.**

9 **(G) THE RISK RETENTION GROUP'S BOARD OF DIRECTORS SHALL ADOPT A**
10 **WRITTEN POLICY IN THE PLAN OF OPERATION APPROVED BY THE BOARD THAT**
11 **REQUIRES THE BOARD TO:**

12 **(1) ASSURE THAT ALL OWNERS AND INSUREDS OF THE RISK**
13 **RETENTION GROUP RECEIVE EVIDENCE OF OWNERSHIP INTEREST;**

14 **(2) DEVELOP A SET OF GOVERNANCE STANDARDS APPLICABLE TO**
15 **THE RISK RETENTION GROUP;**

16 **(3) OVERSEE THE EVALUATION OF THE RISK RETENTION GROUP'S**
17 **MANAGEMENT, INCLUDING THE PERFORMANCE OF THE CAPTIVE MANAGER,**
18 **MANAGING GENERAL UNDERWRITER, OR OTHER PARTY OR PARTIES RESPONSIBLE**
19 **FOR UNDERWRITING, DETERMINING RATES, COLLECTING PREMIUM, ADJUSTING OR**
20 **SETTLING CLAIMS, OR PREPARING FINANCIAL STATEMENTS;**

21 **(4) REVIEW AND APPROVE THE AMOUNT TO BE PAID FOR ALL**
22 **MATERIAL SERVICE PROVIDERS; AND**

23 **(5) REVIEW AND APPROVE, AT LEAST ANNUALLY:**

24 **(I) THE RISK RETENTION GROUP'S GOALS AND OBJECTIVES**
25 **RELEVANT TO THE COMPENSATION OF OFFICERS AND SERVICE PROVIDERS;**

26 **(II) THE OFFICERS' AND SERVICE PROVIDERS' PERFORMANCE**
27 **IN LIGHT OF THOSE GOALS AND OBJECTIVES; AND**

28 **(III) THE CONTINUED ENGAGEMENT OF THE OFFICERS AND**
29 **MATERIAL SERVICE PROVIDERS.**

30 **(H) (1) THE RISK RETENTION GROUP SHALL HAVE AN AUDIT COMMITTEE.**

1 **(2) THE AUDIT COMMITTEE SHALL BE COMPOSED OF AT LEAST THREE**
2 **BOARD MEMBERS WHO HAVE BEEN DETERMINED TO BE INDEPENDENT UNDER**
3 **SUBSECTION (E) OF THIS SECTION.**

4 **(3) THE AUDIT COMMITTEE SHALL HAVE A WRITTEN CHARTER THAT**
5 **DEFINES THE COMMITTEE'S PURPOSES, INCLUDING, AT A MINIMUM, TO:**

6 **(I) ASSIST BOARD OVERSIGHT OF:**

7 **1. THE INTEGRITY OF THE FINANCIAL STATEMENTS;**

8 **2. THE COMPLIANCE WITH LEGAL AND REGULATORY**
9 **REQUIREMENTS; AND**

10 **3. THE QUALIFICATIONS, INDEPENDENCE, AND**
11 **PERFORMANCE OF THE INDEPENDENT AUDITOR AND ACTUARY;**

12 **(II) DISCUSS THE ANNUAL AUDITED FINANCIAL STATEMENTS**
13 **AND QUARTERLY FINANCIAL STATEMENTS WITH MANAGEMENT;**

14 **(III) DISCUSS THE ANNUAL AUDITED FINANCIAL STATEMENTS**
15 **WITH ITS INDEPENDENT AUDITOR AND, IF ADVISABLE, DISCUSS ITS QUARTERLY**
16 **FINANCIAL STATEMENTS WITH ITS INDEPENDENT AUDITOR;**

17 **(IV) DISCUSS POLICIES WITH RESPECT TO RISK ASSESSMENT**
18 **AND RISK MANAGEMENT;**

19 **(V) MEET SEPARATELY AND PERIODICALLY, EITHER DIRECTLY**
20 **OR THROUGH A DESIGNATED REPRESENTATIVE OF THE COMMITTEE, WITH**
21 **MANAGEMENT AND INDEPENDENT AUDITORS;**

22 **(VI) REVIEW WITH THE INDEPENDENT AUDITOR ANY AUDIT**
23 **PROBLEMS OR DIFFICULTIES AND MANAGEMENT'S RESPONSE;**

24 **(VII) SET CLEAR HIRING POLICIES OF THE RISK RETENTION**
25 **GROUP AS TO THE HIRING OF EMPLOYEES OR FORMER EMPLOYEES OF THE**
26 **INDEPENDENT AUDITOR;**

27 **(VIII) REQUIRE THE EXTERNAL AUDITOR TO ROTATE THE LEAD OR**
28 **COORDINATING AUDIT PARTNER HAVING PRIMARY RESPONSIBILITY FOR THE RISK**
29 **RETENTION GROUP'S AUDIT AS WELL AS THE AUDIT PARTNER RESPONSIBLE FOR**
30 **REVIEWING THAT AUDIT SO THAT NEITHER INDIVIDUAL PERFORMS AUDIT SERVICES**
31 **FOR MORE THAN 5 CONSECUTIVE FISCAL YEARS; AND**

1 (IX) REPORT REGULARLY TO THE BOARD OF DIRECTORS.

2 (4) A NONINDEPENDENT BOARD MEMBER MAY PARTICIPATE IN THE
3 ACTIVITIES OF THE AUDIT COMMITTEE IF INVITED BY THE MEMBERS OF THE AUDIT
4 COMMITTEE BUT MAY NOT BE A MEMBER OF THE AUDIT COMMITTEE.

5 (5) NOTWITHSTANDING PARAGRAPH (1) OF THIS SUBSECTION, THE
6 COMMISSIONER MAY WAIVE THE REQUIREMENT TO ESTABLISH AN AUDIT
7 COMMITTEE COMPOSED OF INDEPENDENT BOARD MEMBERS IF THE RISK
8 RETENTION GROUP IS ABLE TO DEMONSTRATE TO THE COMMISSIONER THAT:

9 (I) IT IS IMPRACTICABLE TO DO SO; AND

10 (II) THE RISK RETENTION GROUP'S BOARD OF DIRECTORS
11 ITSELF IS OTHERWISE ABLE TO ACCOMPLISH THE PURPOSES OF AN AUDIT
12 COMMITTEE AS DESCRIBED IN PARAGRAPH (3) OF THIS SUBSECTION.

13 (I) (1) THE BOARD OF DIRECTORS SHALL ADOPT GOVERNANCE
14 STANDARDS.

15 (2) THE GOVERNANCE STANDARDS SHALL INCLUDE:

16 (I) A PROCESS BY WHICH THE DIRECTORS ARE ELECTED BY
17 THE OWNERS OR INSUREDS;

18 (II) DIRECTOR QUALIFICATION STANDARDS;

19 (III) DIRECTOR RESPONSIBILITIES;

20 (IV) DIRECTOR ACCESS TO MANAGEMENT AND, AS NECESSARY
21 AND APPROPRIATE, INDEPENDENT ADVISORS;

22 (V) DIRECTOR COMPENSATION;

23 (VI) DIRECTOR ORIENTATION AND CONTINUING EDUCATION;

24 (VII) THE POLICIES AND PROCEDURES THAT ARE FOLLOWED FOR
25 MANAGEMENT SUCCESSION; AND

26 (VIII) THE POLICIES AND PROCEDURES THAT ARE FOLLOWED FOR
27 ANNUAL PERFORMANCE EVALUATION OF THE BOARD.

1 **(3) THE BOARD OF DIRECTORS SHALL DISCLOSE THE GOVERNANCE**
2 **STANDARDS:**

3 **(I) BY ELECTRONIC MEANS, WHICH MAY INCLUDE POSTING ON**
4 **THE RISK RETENTION GROUP'S WEBSITE, OR OTHER REASONABLE MEANS; AND**

5 **(II) ON THE REQUEST OF MEMBERS AND INSURED.**

6 **(J) (1) THE BOARD OF DIRECTORS SHALL ADOPT A CODE OF BUSINESS**
7 **CONDUCT AND ETHICS FOR DIRECTORS, OFFICERS, AND EMPLOYEES.**

8 **(2) THE CODE OF BUSINESS CONDUCT AND ETHICS SHOULD INCLUDE:**

9 **(I) CONFLICTS OF INTEREST;**

10 **(II) MATTERS COVERED UNDER THE CORPORATE**
11 **OPPORTUNITIES DOCTRINE;**

12 **(III) CONFIDENTIALITY;**

13 **(IV) FAIR DEALING;**

14 **(V) PROTECTION AND PROPER USE OF RISK RETENTION GROUP**
15 **ASSETS;**

16 **(VI) COMPLIANCE WITH ALL APPLICABLE LAWS, RULES, AND**
17 **REGULATIONS; AND**

18 **(VII) REQUIRING THE REPORTING OF ANY ILLEGAL OR**
19 **UNETHICAL BEHAVIOR THAT AFFECTS THE OPERATION OF THE RISK RETENTION**
20 **GROUP.**

21 **(3) THE BOARD OF DIRECTORS SHALL DISCLOSE THE CODE OF**
22 **BUSINESS CONDUCT AND ETHICS:**

23 **(I) BY ELECTRONIC MEANS, WHICH MAY INCLUDE POSTING ON**
24 **THE RISK RETENTION GROUP'S WEBSITE, OR OTHER REASONABLE MEANS; AND**

25 **(II) ON THE REQUEST OF MEMBERS AND INSURED.**

26 **(4) ANY WAIVER OF THE CODE OF BUSINESS CONDUCT AND ETHICS**
27 **FOR ANY DIRECTOR OR EXECUTIVE OFFICER SHALL PROMPTLY BE DISCLOSED TO**
28 **THE BOARD OF DIRECTORS.**

1 **(K) THE CAPTIVE MANAGER AND THE PRESIDENT OR CHIEF EXECUTIVE**
2 **OFFICER OF THE RISK RETENTION GROUP SHALL PROMPTLY NOTIFY THE**
3 **COMMISSIONER IN WRITING IF EITHER BECOMES AWARE OF ANY MATERIAL**
4 **NONCOMPLIANCE WITH ANY OF THE GOVERNANCE STANDARDS REQUIRED UNDER**
5 **SUBSECTIONS (E) THROUGH (J) OF THIS SECTION.**

6 25–103.

7 (a) A risk retention group that is chartered and licensed in a state other than this
8 State and that seeks to do business as a risk retention group in this State shall comply with
9 the requirements of this section.

10 (b) (1) Before a risk retention group offers insurance in this State, the risk
11 retention group shall submit to the Commissioner:

12 (i) a statement that identifies:

13 1. the state or states in which the risk retention group is
14 chartered and licensed as a liability insurance company;

15 2. the date of chartering and licensing;

16 3. the principal place of business of the risk retention group;

17 and

18 4. any other information, including information on
19 membership of the risk retention group, that the Commissioner requires to verify that the
20 risk retention group qualifies as a risk retention group, as defined in § 25–101 of this
21 subtitle;

22 (ii) subject to paragraphs (2) and (3) of this subsection, a copy of the
23 plan of operation or feasibility study of the risk retention group and any revisions of the
24 plan of operation or feasibility study submitted to the state in which the risk retention
25 group is chartered and licensed;

26 (iii) a statement of registration that designates the Commissioner as
27 its agent for service of legal process;

28 (iv) a copy of the financial statement of the risk retention group that:

29 1. was submitted to the state in which the risk retention
30 group is chartered and licensed;

31 2. is certified by an independent certified public accountant;

32 and

1 3. contains a statement of opinion on loss and loss
2 adjustment expense reserves made by a member of the American Academy of Actuaries or
3 a qualified loss reserve specialist;

4 (v) a copy of each examination of the risk retention group that is
5 certified by the Commissioner or other public official that conducts the examination;

6 (vi) on request of the Commissioner, a copy of any information or
7 document that relates to an outside audit performed with respect to the risk retention
8 group; and

9 (vii) any other information that the Commissioner requires in order
10 to verify the continuing qualification of the risk retention group as a risk retention group,
11 as defined in § 25–101 of this subtitle.

12 (2) Subsection (b)(1)(ii) of this section does not apply to a line or
13 classification of liability insurance that:

14 (i) was defined in the Product Liability Risk Retention Act of 1981
15 on or before October 26, 1986; and

16 (ii) was offered on or before October 26, 1986 by a risk retention
17 group that had been chartered and operating for not less than 3 years on or before October
18 26, 1986.

19 (3) The risk retention group shall submit a copy of [a revision] **ANY**
20 **MATERIAL REVISION** to its plan of operation or feasibility study **EQUIVALENT TO THAT**
21 required by § 25–102 of this subtitle [at the same time that the revision is submitted to the
22 commissioner of the chartering state of the risk retention group] **WITHIN 30 DAYS AFTER**
23 **THE DATE OF THE APPROVAL OF THE REVISION BY THE COMMISSIONER OF ITS**
24 **CHARTERING STATE OR, IF THAT APPROVAL IS NOT REQUIRED, WITHIN 30 DAYS**
25 **AFTER FILING.**

26 (4) The Commissioner shall determine the filing fee for the statement of
27 registration required by subsection (b)(1)(iii) of this section.

28 (c) (1) All premiums paid in this State to risk retention groups chartered in
29 another state for coverages are subject to taxation at the same rate and are subject to the
30 same interest, fines, and penalties for nonpayment as are foreign admitted insurers.

31 (2) Each risk retention group subject to this subsection is liable for the
32 payment of premium taxes and taxes on premiums of direct business for risks resident or
33 located in the State.

34 (3) On or before March 1 of each year, each risk retention group shall report

1 all premiums paid to it for risks resident or located in the State.

2 (4) If the risk retention group fails to pay the specified taxes, the taxes shall
3 be paid by each of the risk retention group's members whose risks are resident or located
4 in the State.

5 (d) Each risk retention group, and each agent or representative of a risk retention
6 group, shall comply with Title 27, Subtitle 3 of this article.

7 (e) (1) Each risk retention group, and each agent or representative of a risk
8 retention group, shall comply with all applicable insurance laws of the State regarding
9 deceptive, false, or fraudulent acts or practices.

10 (2) The Commissioner may seek from a court an injunction regarding
11 deceptive, false, or fraudulent acts or practices.

12 (f) (1) A risk retention group shall submit to an examination by the
13 Commissioner to determine its financial condition if the insurance commissioner of the
14 jurisdiction in which the risk retention group is chartered and licensed has not initiated an
15 examination or does not initiate an examination within 60 days after a request by the
16 Commissioner.

17 (2) Each examination shall be coordinated to avoid unjustified repetition
18 and conducted in an expeditious manner and in accordance with the National Association
19 of Insurance Commissioners' Examiner Handbook.

20 (g) Each application form for insurance from a risk retention group and each
21 policy issued by a risk retention group for or on behalf of a resident of the State shall
22 contain, in 10 point type on the front page and the declaration page, the following notice:

23 "Notice

24 This policy is issued by your risk retention group. Your risk retention group may not be
25 subject to all of the insurance laws and regulations of your state. State insurance insolvency
26 guaranty funds are not available for your risk retention group."

27 (h) (1) A risk retention group may not solicit or sell insurance to a person that
28 is not eligible for membership in the risk retention group.

29 (2) A risk retention group that is in a hazardous financial condition or is
30 financially impaired may not solicit or sell insurance, or operate as a risk retention group.

31 (i) Unless a risk retention group is comprised entirely of insurance companies,
32 the risk retention group may not conduct business in this State if an insurance company is
33 directly or indirectly a member or owner of the risk retention group.

34 (j) A risk retention group may not offer coverage that is prohibited by this article

1 or declared unlawful by the Court of Appeals of Maryland.

2 (k) If there has been a finding of financial impairment after an examination under
3 subsection (f) of this section, a risk retention group that is not chartered in the State and
4 that is doing business in the State shall comply with a lawful order issued in a voluntary
5 dissolution proceeding or in a delinquency proceeding commenced by an insurance
6 commissioner of a state.

7 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
8 October 1, 2018.