



Ohio Revised Code

Section 3960.01 Risk retention definitions.

Effective: October 26, 1989

Legislation: House Bill 105 - 118th General Assembly

As used in sections 3960.01 to 3960.13 of the Revised Code:

(A) "Completed operations liability" means liability arising out of the installation, maintenance, or repair of any product at a site that is not owned or controlled by either a person who performs that work or a person who hires an independent contractor to perform the work. "Completed operations liability" includes liability for activities that are completed or abandoned before the date of the occurrence giving rise to the liability.

(B) "Domicile," for purposes of determining the state in which a purchasing group is domiciled, means:

- (1) For a corporation, the state in which the purchasing group is incorporated;
- (2) For an unincorporated entity, the state of its principal place of business.

(C) "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 to do either of the following:

- (1) Meet obligations to policyholders with respect to known claims and reasonably anticipated claims;
- (2) Pay other obligations in the normal course of business.

(D) "Insurance" means primary insurance, excess insurance, reinsurance, surplus lines insurance, and any other arrangement for shifting and distributing risk that is determined to be insurance under the laws of this state.



(E)(1) "Liability," except as provided in division (E)(2) of this section, means legal liability for damages, including but not limited to 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 either of the following:

(a) Any business, whether profit or nonprofit, trade, product, or services, including but not limited to, professional services, premises, or operations;

(b) Any activity of any state or local government, or any agency or political subdivision of a state or local government.

(2) "Liability" does not include personal risk liability or an employer's liability with respect to its employees other than legal liability under the "Employers' Liability Act," 53 Stat. 1404, (1939) 45 U.S.C.A. 51, as amended.

(F) "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 described in division (E) of this section.

(G) "Plan of operation or a feasibility study" means an analysis that presents the expected activities and results of a risk retention group, including, at a minimum, all of the following:

(1) Information sufficient to verify that its members are engaged in businesses or activities similar or related with respect to the liability to which such members are exposed by virtue of any related, similar, or common business, trade, product, services, premises, or operations;

(2) For each state in which it intends to operate, the coverages, deductibles, coverage limits, rates, and rating classification systems for each line of insurance it intends to offer;

(3) The historical and expected loss experience of the proposed members and national experience of similar exposures to the extent that this experience is reasonably available;

(4) Pro forma financial statements and projections;



- (5) 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;
- (6) Identification of management, underwriting, and claims procedures, marketing methods, managerial oversight methods, investment policies, and reinsurance agreements;
- (7) Identification of each state in which the risk retention group has obtained, or sought to obtain, a charter and license, and a description of its status in each such state;
- (8) Such other matters as may be prescribed for liability insurance companies authorized by the insurance laws of the state in which the risk retention group is chartered by the commissioner of insurance of that state.
- (H) "Product liability" means liability for damages because of any personal injury, death, emotional harm, consequential economic damages, or property damages, 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. "Product liability" does not include the liability of any person for those damages if the product involved was in the possession of the person when the incident giving rise to the claim occurred.
- (I) "Purchasing group" means any group to which all of the following apply:
- (1) It has as one of its purposes the purchase of liability insurance on a group basis;
 - (2) It purchases such insurance only for its group members and only to cover their similar or related liability exposure as described in division (I)(3) of this section;
 - (3) It is composed of members whose business 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;



(4) It is domiciled in any state;

(5) It meets the criteria established under the federal "Risk Retention Amendments of 1986," 100 Stat. 3170, 15 U.S.C.A. 3901, as amended.

(J) "Risk retention group" means any corporation or other limited liability association formed under the laws of any state, Bermuda, or the Cayman Islands to which all of the following apply:

(1) Its primary activity consists of assuming and spreading all, or any portion, of the liability exposure of its group members;

(2) It is organized for the primary purpose of conducting the activity described in division (J)(1) of this section;

(3) Either of the following applies to it:

(a) It is chartered and licensed as a liability insurance company and authorized to engage in the business of insurance under the laws of any state;

(b) It was, before January 1, 1985, chartered or licensed and authorized to engage in the business of insurance under the laws of Bermuda or the Cayman Islands and, before that date, had certified to the commissioner of insurance of at least one state that it satisfied the capitalization requirements of the state, except that it 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 those terms were defined in the federal "Product Liability Risk Retention Act of 1981," 95 Stat. 949, 15 U.S.C.A. 3901, before the effective date of the federal "Risk Retention Amendments of 1986," 100 Stat. 3170, 15 U.S.C.A. 3901.

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

(5) Either of the following applies to it:



- (a) It has as its owners only persons who comprise the membership of the risk retention group and who are provided insurance by the group;

- (b) It has as its sole owner an organization which has as its members, only persons who comprise the membership of the risk retention group; and as its owners, only persons who comprise the membership of the risk retention group and who are provided insurance by the group.

- (6) Its members are engaged in business or activities similar or related with respect to the liability of which the members are exposed by virtue of any related, similar, or common business trade, product, services, premises, or operations;

- (7) Its activities do not include the provision of any insurance other than the following:
 - (a) Liability insurance for assuming and spreading all or any portion of the liability of its group members;

 - (b) Reinsurance with respect to the liability of any other risk retention group or any members of any other risk retention group that is engaged in business or activities so that the other group or member meets the requirements of division (J)(6) of this section for membership in the risk retention group that provides the reinsurance.

- (8) Its name includes the phrase "risk retention group."