

IN THE HOUSE

MARCH 17, 1987

RECEIVED FROM SENATE.

SECOND READING, AMENDMENTS
CONCURRED IN.

SECOND READING, STATEMENT OF
INTENT ADOPTED.

MARCH 18, 1987

THIRD READING, AMENDMENTS
CONCURRED IN.

THIRD READING, STATEMENT OF
INTENT ADOPTED.

SENT TO ENROLLING.

1 House BILL NO. 439
 2 INTRODUCED BY Stanley Miles
 3 BY REQUEST OF THE STATE AUDITOR

4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO THE
 6 REGULATION OF RISK RETENTION GROUPS AND PURCHASING GROUPS;
 7 AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

8
 9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 Section 1. Purpose. The purpose of [sections 1 through
 11 14] is to regulate the formation and operation of risk
 12 retention groups in this state formed pursuant to the
 13 provisions of the federal Liability Risk Retention Act of
 14 1986.

15 Section 2. Definitions. As used in [sections 1 through
 16 14], the following definitions apply:

17 (1) "Commissioner" means the commissioner of insurance
 18 of this state or the insurance regulatory official in any
 19 other state.

20 (2) "Domicile", for purposes of determining the state
 21 where a purchasing group is domiciled, means:

22 (a) for a corporation, the state where the purchasing
 23 group is incorporated; and

24 (b) for an unincorporated entity, the state of its
 25 principal place of business.

1 (3) "Hazardous financial condition" means that, based
 2 on its present or reasonably anticipated financial
 3 condition, a risk retention group, although not yet
 4 financially impaired or insolvent, is unlikely to be able
 5 to:

6 (a) meet obligations to policyholders with respect to
 7 known claims and reasonably anticipated claims; or

8 (b) pay other obligations in the normal course of
 9 business.

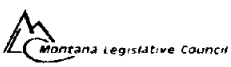
10 (4) "Insurance" means primary insurance, excess
 11 insurance, reinsurance, surplus line insurance, and any
 12 other arrangement for shifting and distributing risk that is
 13 determined to be insurance under the laws of this state.

14 (5) (a) "Liability" means legal liability for damages,
 15 including costs of defense, legal costs and fees, and other
 16 claims expenses, because of injuries to other persons,
 17 damage to their property, or other damage or loss to other
 18 persons resulting from or arising out of:

19 (i) a business, whether profit or nonprofit, trade,
 20 product, services (including professional services),
 21 premises, or operations; or

22 (ii) an activity of any state or local government, or
 23 an agency or political subdivision thereof.

24 (b) The term does not include personal risk liability
 25 or an employer's liability with respect to its employees



1 other than legal liability under the federal Employers'
 2 Liability Act (45 U.S.C. 51, et seq.). As used in this
 3 subsection, personal risk liability means liability for
 4 damages because of injury to any person, damage to property,
 5 or other loss or damage resulting from personal, familial,
 6 or household responsibilities or activities rather than from
 7 responsibilities or activities referred to in subsection
 8 (5)(a).

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

12 (a) the coverages, deductibles, coverage limits,
 13 rates, and rating classification systems for each line of
 14 insurance the group intends to offer;

15 (b) historical and expected loss experience of the
 16 proposed members and national experience of similar
 17 exposures to the extent this experience is reasonably
 18 available;

19 (c) pro forma financial statements and projections;

20 (d) appropriate opinions by a qualified independent
 21 casualty actuary, including a determination of minimum
 22 premium or participation levels required to commence
 23 operations and to prevent a hazardous financial condition;

24 (e) identification of management, underwriting
 25 procedures, managerial oversight methods, and investment

1 policies; and

2 (f) other matters as may be prescribed by the
 3 commissioner for liability insurance companies authorized by
 4 the insurance laws of the state where the risk retention
 5 group is chartered.

6 (7) "Purchasing group" means a group that:

7 (a) has as one of its purposes the purchase of
 8 liability insurance on a group basis;

9 (b) purchases liability insurance only for its group
 10 members and only to cover their similar or related liability
 11 exposure, as described in subsection (7)(c);

12 (c) is composed of members whose businesses or
 13 activities are similar or related with respect to the
 14 liability to which members are exposed by virtue of any
 15 related, similar, or common business, trade, product,
 16 services, premises, or operations; and

17 (d) is domiciled in any state.

18 (8) "Risk retention group" means a corporation or
 19 other limited liability association formed under the laws of
 20 any state, Bermuda, or the Cayman Islands:

21 (a) whose primary activity consists of assuming and
 22 spreading all or any portion of the liability exposure of
 23 its group members;

24 (b) that is organized for the primary purpose of
 25 conducting the activity described under subsection (8)(a);

1 (c) (i) that is chartered and licensed as a liability
2 insurance company and authorized to engage in the business
3 of insurance under the laws of any state; or

4 (ii) that, before January 1, 1985, was chartered or
5 licensed and authorized to engage in the business of
6 insurance under the laws of Bermuda or the Cayman Islands
7 and, before that date, had certified to the insurance
8 regulatory official of at least one state that it satisfied
9 the capitalization requirements of that state. However, such
10 group is considered to be a risk retention group only if it
11 has been engaged in business continuously since January 1,
12 1985, and only for the purpose of continuing to provide
13 insurance to cover product liability or completed operations
14 liability.

15 (A) For purposes of this subsection (8), "completed
16 operations liability" means liability arising out of the
17 installation, maintenance, or repair of any product at a
18 site which is not owned or controlled by a person who:

19 (I) performs that work; or

20 (II) hires an independent contractor to perform that
21 work; but shall include liability for activities which are
22 completed or abandoned before the date of the occurrence
23 giving rise to the liability.

24 (B) For purposes of this subsection (8), "product
25 liability" means liability for damages because of any

1 personal injury, death, emotional harm, consequential
2 economic damage, or property damage (including damages
3 resulting from the loss of use of property) arising out of
4 the manufacture, design, importation, distribution,
5 packaging, labeling, lease, or sale of a product, but does
6 not include the liability of any person for those damages if
7 the product involved was in the possession of such a person
8 when the incident giving rise to the claim occurred.

9 (d) that does not exclude any person from membership
10 in the group solely to provide to members of the group a
11 competitive advantage over such person;

12 (e) (i) that has as its members only persons who have
13 an ownership interest in the group and that has as its
14 owners only persons who are members and who are provided
15 insurance by the risk retention group; or

16 (ii) that has as its sole member and sole owner an
17 organization that is owned by persons who are provided
18 insurance by the risk retention group;

19 (f) whose members are engaged in businesses or
20 activities that are similar or related with respect to the
21 liability to which the members are exposed by virtue of any
22 related, similar, or common business, trade, product,
23 service, premises, or operation;

24 (g) whose activities do not include the provision of
25 insurance other than:

1 (i) liability insurance for assuming and spreading all
2 or any portion of the liability of its group members; and

3 (ii) reinsurance with respect to the liability of any
4 other risk retention group or member of such other group
5 that is engaged in businesses or activities so that such
6 group or member meets the requirement described in
7 subsection (8)(f) for membership in the risk retention group
8 that provides the reinsurance; and

9 (h) whose name includes the phrase "risk retention
10 group".

11 (9) "State" means any state of the United States or
12 the District of Columbia.

13 Section 3. Chartering -- licensing -- plan of
14 operation. A risk retention group seeking to be chartered in
15 this state must be chartered and licensed as a casualty
16 insurer pursuant to the insurance laws of this state and,
17 except as provided in [sections 3 and 5 through 12], must
18 comply with all of the laws, rules, regulations, and
19 requirements applicable to such insurers chartered and
20 authorized in this state and with [section 4] to the extent
21 such requirements are not a limitation on laws, rules,
22 regulations, or requirements of this state. Before it may
23 offer insurance in any state, the risk retention group shall
24 also submit for approval to the commissioner a plan of
25 operation of a feasibility study and revisions of such plan

1 or study if the group intends to offer any additional lines
2 of liability insurance.

3 Section 4. Risk retention groups not chartered in this
4 state. A risk retention group chartered in a state other
5 than this state and seeking to do business as a risk
6 retention group in this state must observe and abide by the
7 laws of this state as follows:

8 (1) Before offering insurance in this state, a risk
9 retention group shall submit to the commissioner:

10 (a) a statement identifying the state or states where
11 the risk retention group is chartered and authorized as a
12 casualty insurer, date of chartering, its principal place of
13 business, and such other information, including information
14 on its membership, as the commissioner requires to verify
15 that the risk retention group is qualified under [section
16 2(8)];

17 (b) a copy of its plan of operation or a feasibility
18 study and revisions of such plan or study submitted to its
19 state of domicile. However, this provision relating to the
20 submission of a plan of operation or a feasibility study
21 does not apply with respect to any line or classification of
22 liability insurance that was defined in the federal Product
23 Liability Risk Retention Act of 1981 before October 27,
24 1986, and that was offered before that date by a risk
25 retention group that had been chartered and operated for not

1 less than 3 years before that date; and

2 (c) a statement of registration that designates the
3 commissioner as its agent for the purpose of receiving
4 service of legal documents or process.

5 (2) A risk retention group doing business in this
6 state shall submit to the commissioner:

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

14 (b) a copy of each examination of the risk retention
15 group as certified by the insurance regulatory official of
16 the state in which the examination was conducted or public
17 official conducting the examination;

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

21 (d) such information as may be required to verify the
22 group's continuing qualification as a risk retention group
23 under [section 2(8)].

24 (3) (a) All premiums paid for coverage within this
25 state to risk retention groups are subject to taxation at

1 the same rate and to the same interest, fines, and penalties
2 for nonpayment that apply to foreign admitted insurers.

3 (b) To the extent that an agent is used, he shall
4 report and pay the taxes for the premiums for risks that he
5 has placed with or on behalf of a risk retention group not
6 chartered in this state.

7 (c) To the extent that an agent is not used or fails
8 to pay the tax, each risk retention group shall pay the tax
9 for risks insured within the state. Further, each risk
10 retention group shall report all premiums paid to it for
11 risks insured within the state.

12 (4) Each risk retention group, its agents, and its
13 representatives shall comply with Title 33, chapter 18, part
14 2.

15 (5) Each risk retention group shall comply with the
16 provisions of Title 33, chapter 18, part 2, regarding
17 deceptive, false, or fraudulent acts or practices. However,
18 if the commissioner seeks an injunction regarding such
19 conduct, the injunction must be obtained from a court of
20 competent jurisdiction.

21 (6) Each risk retention group shall submit to an
22 examination by the commissioner to determine its financial
23 condition if the insurance regulatory official of the
24 jurisdiction where the group is chartered has not initiated
25 an examination or does not initiate an examination within 60

1 days after a request by the commissioner. The examination
 2 must be coordinated to avoid unjustified repetition and be
 3 conducted in an expeditious manner in accordance with the
 4 national association of insurance commissioners examiners
 5 handbook.

6 (7) Each policy issued by a risk retention group must
 7 contain, in 10-point type on the front page and the
 8 declaration page, the following notice:

9 "NOTICE

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

15 (8) The following acts by a risk retention group are
 16 prohibited:

17 (a) the solicitation or sale of insurance by a risk
 18 retention group to any person who is not eligible for
 19 membership in the group; and

20 (b) the solicitation or sale of insurance by or
 21 operation of a risk retention group that is in a hazardous
 22 financial condition or is financially impaired.

23 (9) A risk retention group is not allowed to do
 24 business in this state if an insurer is directly or
 25 indirectly a member or owner of the risk retention group,

1 other than in the case of a risk retention group all of
 2 whose members are insurers.

3 (10) A risk retention group may not offer insurance
 4 policy coverage declared unlawful by the Montana supreme
 5 court.

6 (11) A risk retention group not chartered in this state
 7 and doing business in this state must comply with a lawful
 8 order issued in a voluntary dissolution proceeding or in a
 9 delinquency proceeding commenced by the insurance regulatory
 10 official of any state if there has been a finding of
 11 financial impairment after an examination under [section
 12 4(6)].

13 Section 5. Compulsory associations. (1) A risk
 14 retention group may not join or contribute financially to
 15 any insurance insolvency guaranty fund or similar mechanism
 16 in this state. In addition, a risk retention group or its
 17 insureds may not receive any benefit from any such fund for
 18 claims arising out of the operations of the risk retention
 19 group.

20 (2) A risk retention group shall participate in this
 21 state's joint underwriting associations, mandatory liability
 22 pools, and similar mechanisms as provided by Title 33,
 23 chapter 8.

24 Section 6. Countersignature not required. A policy of
 25 insurance issued to a risk retention group or member of that

1 group need not be required to be countersigned as provided
2 in 33-17-1111.

3 Section 7. Purchasing groups -- exemption from certain
4 laws relating to group purchase of insurance. A purchasing
5 group meeting the criteria established under the provisions
6 of the federal Liability Risk Retention Act of 1986 is
7 exempt from any law of this state relating to the formation
8 of groups for the purchase of insurance, prohibition of
9 group purchasing, or any law that would discriminate against
10 a purchasing group or its members. In addition, an insurer
11 is exempt from any law of this state that prohibits
12 providing or offering to provide to a purchasing group or
13 its members advantages based on their loss and expense
14 experience not afforded to other persons with respect to
15 rates, policy forms, coverages, or other matters. A
16 purchasing group is subject to all other applicable laws of
17 this state.

18 Section 8. Notice and registration requirements of
19 purchasing groups. (1) A purchasing group that intends to
20 do business in this state shall furnish notice to the
21 commissioner that:

- 22 (a) identifies the state where the group is domiciled;
23 (b) specifies the lines and classifications of
24 liability insurance that the purchasing group intends to
25 purchase;

1 (c) identifies the insurer from which the purchasing
2 group intends to purchase its insurance and the domicile of
3 the insurer;

4 (d) identifies the principal place of business of the
5 purchasing group; and

6 (e) provides information required by the commissioner
7 to verify that the purchasing group is qualified under
8 [section 2(7)].

9 (2) The purchasing group shall register with and
10 designate the commissioner as its agent solely for the
11 purpose of receiving service of legal documents or process.
12 However, such requirements do not apply in the case of a
13 purchasing group:

14 (a) (i) that was domiciled before April 2, 1986; and
15 (ii) that was domiciled on and after October 27, 1986,
16 in any state of the United States;

17 (b) (i) that, before October 26, 1986, purchased
18 insurance from an insurer licensed in any state; and

19 (ii) that, since October 26, 1986, purchased its
20 insurance from an insurer licensed in any state;

21 (c) that was a purchasing group under the requirements
22 of the federal Product Liability Risk Retention Act of 1981
23 before October 26, 1986; and

24 (d) that does not purchase insurance that was not
25 authorized for purposes of an exemption under the federal

1 Product Liability Risk Retention Act of 1981, as in effect
2 before October 27, 1986.

3 Section 9. Restriction on insurance purchased by
4 purchasing groups. (1) A purchasing group may not purchase
5 insurance from a risk retention group that is not chartered
6 in a state or from an insurer not authorized in the state
7 where the purchasing group is located, unless the purchase
8 is effected through a licensed agent or broker acting
9 pursuant to the surplus lines laws and regulations of that
10 state.

11 (2) For purposes of subsection (1), the state in which
12 a purchasing group is located is each state in which a
13 member of the purchasing group has a risk resident, located,
14 or to be performed.

15 Section 10. Administrative and procedural authority
16 regarding risk retention groups and purchasing groups. The
17 commissioner is authorized to use any powers established
18 under [this act] to enforce the laws of this state so long
19 as those powers are not specifically preempted by the
20 federal Liability Risk Retention Act of 1986. The
21 commissioner's powers include but are not limited to the
22 commissioner's administrative authority to investigate,
23 issue subpoenas, conduct depositions and hearings, issue
24 orders, and impose penalties. With regard to any
25 investigation, administrative proceedings, or litigation,

1 the commissioner may rely on the procedural law and
2 regulations of the state. The injunctive authority of the
3 commissioner in regard to risk retention groups is
4 restricted by the requirement that any injunction be issued
5 by a court of competent jurisdiction.

6 Section 11. Penalties. A risk retention group that
7 violates any provision of [sections 3 through 12] is subject
8 to fines and penalties applicable to licensed insurers
9 generally, including revocation of its license to do
10 business in this state.

11 Section 12. Duty of agents to obtain license. A person
12 acting or offering to act as an agent for a risk retention
13 group or purchasing group, that solicits members, sells
14 insurance coverage, purchases coverage for its members
15 located within the state, or otherwise does business in this
16 state shall, before commencing such activity, obtain a
17 license from the commissioner.

18 Section 13. Enforceability of orders issued in United
19 States district court. An order issued by any district court
20 of the United States enjoining a risk retention group from
21 soliciting or selling insurance or operating in any state,
22 territory, or possession of the United States upon a finding
23 that such a group is in a hazardous financial condition, is
24 enforceable in the courts of this state.

25 Section 14. Rules and regulations. The commissioner

1 may make and amend any reasonable rules relating to risk
2 retention groups and purchasing groups necessary or
3 desirable to carry out the provisions of [sections 3 through
4 12].

5 Section 15. Codification instruction. Sections 1
6 through 14 are intended to be codified as an integral part
7 of Title 33, and the provisions of Title 33 apply to
8 sections 1 through 14.

9 Section 16. Effective date. This act is effective on
10 passage and approval.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB439, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act relating to the Regulation of Risk Retention Groups and Purchasing Groups.

ASSUMPTIONS:

1. Federal Law requires us to regulate these already.
2. There would be no additional staff require.
3. Risk Retention Premiums will be 10% over the 1985 premium volume level or 3.2 million.

FISCAL IMPACT:

	<u>FY88</u>	<u>FY89</u>	<u>TOTAL</u>
<u>Additional Insurance</u>			
<u>Regulatory Revenues:</u>	\$88,000	\$88,000	\$176,000

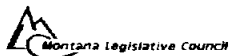
David L. Hunter DATE 1/29/87
DAVID L. HUNTER, BUDGET DIRECTOR
Office of Budget and Program Planning

Rep. Grady DATE 1-30
ED GRADY, PRIMARY SPONSOR
Fiscal Note for HB439, as introduced.
HB-439

APPROVED BY COMM. ON
BUSINESS AND LABOR

1 HOUSE BILL NO. 439
 2 INTRODUCED BY GRADY, MILES, THAYER
 3 BY REQUEST OF THE STATE AUDITOR
 4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO THE
 6 REGULATION OF RISK RETENTION GROUPS AND PURCHASING GROUPS;
 7 AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."
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 9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 10 Section 1. Purpose. The purpose of [sections 1 through
 11 14] is to regulate the formation and operation of risk
 12 retention groups in this state formed pursuant to the
 13 provisions of the federal Liability Risk Retention Act of
 14 1986.
 15 Section 2. Definitions. As used in [sections 1 through
 16 14], the following definitions apply:
 17 ~~{1}--"Commissioner"--means-the-commissioner-of-insurance~~
 18 ~~of--this--state--or-the-insurance-regulatory-official-in-any~~
 19 ~~other-state;~~
 20 {2}{1} "Domicile", for purposes of determining the
 21 state where a purchasing group is domiciled, means:
 22 (a) for a corporation, the state where the purchasing
 23 group is incorporated; and
 24 (b) for an unincorporated entity, the state of its
 25 principal place of business.

1 {3}{2} "Hazardous financial condition" means that,
 2 based on its present or reasonably anticipated financial
 3 condition, a risk retention group, although not yet
 4 financially impaired or insolvent, is unlikely to be able
 5 to:
 6 (a) meet obligations to policyholders with respect to
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 8 (b) pay other obligations in the normal course of
 9 business.
 10 {4}{3} "Insurance" means primary insurance, excess
 11 insurance, reinsurance, surplus line insurance, and any
 12 other arrangement for shifting and distributing risk that is
 13 determined to be insurance under the laws of this state.
 14 {5}{4} (a) "Liability" means legal liability for
 15 damages, including costs of defense, legal costs and fees,
 16 and other claims expenses, because of injuries to other
 17 persons, damage to their property, or other damage or loss
 18 to other persons resulting from or arising out of:
 19 (i) a business, whether profit or nonprofit, trade,
 20 product, services (including professional services),
 21 premises, or operations; or
 22 (ii) an activity of any state or local government, or
 23 an agency or political subdivision thereof.
 24 (b) The term does not include personal risk liability
 25 or an employer's liability with respect to its employees



1 other than legal liability under the federal Employers'
 2 Liability Act (45 U.S.C. 51, et seq.). As used in this
 3 subsection, personal risk liability means liability for
 4 damages because of injury to any person, damage to property,
 5 or other loss or damage resulting from personal, familial,
 6 or household responsibilities or activities rather than from
 7 responsibilities or activities referred to in subsection
 8 ~~†5†~~(4)(a).

9 ~~†6†~~(5) "Plan of operation or a feasibility study"
 10 means an analysis that presents the expected activities and
 11 results of a risk retention group, including at a minimum:

12 (a) the coverages, deductibles, coverage limits,
 13 rates, and rating classification systems for each line of
 14 insurance the group intends to offer;

15 (b) historical and expected loss experience of the
 16 proposed members and national experience of similar
 17 exposures to the extent this experience is reasonably
 18 available;

19 (c) pro forma financial statements and projections;

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 21 casualty actuary, including a determination of minimum
 22 premium or participation levels required to commence
 23 operations and to prevent a hazardous financial condition;

24 (e) identification of management, underwriting
 25 procedures, managerial oversight methods, and investment

1 policies; and

2 (f) other matters as may be prescribed by the
 3 commissioner for liability insurance companies authorized by
 4 the insurance laws of the state where the risk retention
 5 group is chartered.

6 ~~†7†~~(6) "Purchasing group" means a group that:

7 (a) has as one of its purposes the purchase of
 8 liability insurance on a group basis;

9 (b) purchases liability insurance only for its group
 10 members and only to cover their similar or related liability
 11 exposure, as described in subsection ~~†7†~~(6)(c);

12 (c) is composed of members whose businesses or
 13 activities are similar or related with respect to the
 14 liability to which members are exposed by virtue of any
 15 related, similar, or common business, trade, product,
 16 services, premises, or operations; and

17 (d) is domiciled in any state.

18 ~~†8†~~(7) "Risk retention group" means a corporation or
 19 other limited liability association formed under the laws of
 20 any state, Bermuda, or the Cayman Islands:

21 (a) whose primary activity consists of assuming and
 22 spreading all or any portion of the liability exposure of
 23 its group members;

24 (b) that is organized for the primary purpose of
 25 conducting the activity described under subsection

1 ~~f0+~~(7)(a);

2 (c) (i) that is chartered and licensed as a liability

3 insurance company and authorized to engage in the business

4 of insurance under the laws of any state; or

5 (ii) that, before January 1, 1985, was chartered or

6 licensed and authorized to engage in the business of

7 insurance under the laws of Bermuda or the Cayman Islands

8 and, before that date, had certified to the insurance

9 regulatory official of at least one state that it satisfied

10 the capitalization requirements of that state. However, such

11 group is considered to be a risk retention group only if it

12 has been engaged in business continuously since January 1,

13 1985, and only for the purpose of continuing to provide

14 insurance to cover product liability or completed operations

15 liability.

16 (A) For purposes of this subsection ~~f0+~~ (7),

17 "completed operations liability" means liability arising out

18 of the installation, maintenance, or repair of any product

19 at a site which is not owned or controlled by a person who:

20 (I) performs that work; or

21 (II) hires an independent contractor to perform that

22 work; but shall include liability for activities which are

23 completed or abandoned before the date of the occurrence

24 giving rise to the liability.

25 (B) For purposes of this subsection ~~f0+~~ (7), "product

1 liability" means liability for damages because of any

2 personal injury, death, emotional harm, consequential

3 economic damage, or property damage (including damages

4 resulting from the loss of use of property) arising out of

5 the manufacture, design, importation, distribution,

6 packaging, labeling, lease, or sale of a product, but does

7 not include the liability of any person for those damages if

8 the product involved was in the possession of such a person

9 when the incident giving rise to the claim occurred.

10 (d) that does not exclude any person from membership

11 in the group solely to provide to members of the group a

12 competitive advantage over such person;

13 (e) (i) that has as its members only persons who have

14 an ownership interest in the group and that has as its

15 owners only persons who are members and who are provided

16 insurance by the risk retention group; or

17 (ii) that has as its sole member and sole owner an

18 organization that is owned by persons who are provided

19 insurance by the risk retention group;

20 (f) whose members are engaged in businesses or

21 activities that are similar or related with respect to the

22 liability to which the members are exposed by virtue of any

23 related, similar, or common business, trade, product,

24 service, premises, or operation;

25 (g) whose activities do not include the provision of

1 insurance other than:

2 (i) liability insurance for assuming and spreading all
3 or any portion of the liability of its group members; and

4 (ii) reinsurance with respect to the liability of any
5 other risk retention group or member of such other group
6 that is engaged in businesses or activities so that such
7 group or member meets the requirement described in
8 subsection ~~†8†(7)(f)~~ for membership in the risk retention
9 group that provides the reinsurance; and

10 (h) whose name includes the phrase "risk retention
11 group".

12 ~~†9†(8)~~ "State" means any state of the United States or
13 the District of Columbia.

14 Section 3. Chartering -- licensing -- plan of
15 operation. A risk retention group seeking to be chartered in
16 this state must be chartered and licensed as a casualty
17 insurer pursuant to the insurance laws of this state and,
18 except as provided in [sections 3 and 5 through 12], must
19 comply with all of the laws, rules, regulations, and
20 requirements applicable to such insurers chartered and
21 authorized in this state and with [section 4] to the extent
22 such requirements are not a limitation on laws, rules,
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1 operation ~~of~~ OR a feasibility study and revisions of such
2 plan or study if the group intends to offer any additional
3 lines of liability insurance.

4 Section 4. Risk retention groups not chartered in this
5 state. A risk retention group chartered in a state other
6 than this state and seeking to do business as a risk
7 retention group in this state must observe and abide by the
8 laws of this state as follows:

9 (1) Before offering insurance in this state, a risk
10 retention group shall submit to the commissioner:

11 (a) a statement identifying the state or states where
12 the risk retention group is chartered and authorized as a
13 casualty insurer, date of chartering, its principal place of
14 business, and such other information, including information
15 on its membership, as the commissioner requires to verify
16 that the risk retention group is qualified under [section
17 ~~2†8†(7)~~];

18 (b) a copy of its plan of operation or a feasibility
19 study and revisions of such plan or study submitted to its
20 state of domicile. However, this provision relating to the
21 submission of a plan of operation or a feasibility study
22 does not apply with respect to any line or classification of
23 liability insurance that was defined in the federal Product
24 Liability Risk Retention Act of 1981 before October 27,
25 1986, and that was offered before that date by a risk

1 retention group that had been chartered and operated for not
 2 less than 3 years before that date; and

3 (c) a statement of registration that designates the
 4 commissioner as its agent for the purpose of receiving
 5 service of legal documents or process.

6 (2) A risk retention group doing business in this
 7 state shall submit to the commissioner:

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

15 (b) a copy of each examination of the risk retention
 16 group as certified by the insurance regulatory official of
 17 the state in which the examination was conducted or public
 18 official conducting the examination;

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

22 (d) such information as may be required to verify the
 23 group's continuing qualification as a risk retention group
 24 under [section 2+8+(7)].

25 (3) (a) All premiums paid for coverage within this

1 state to risk retention groups are subject to taxation at
 2 the same rate and to the same interest, fines, and penalties
 3 for nonpayment that apply to foreign admitted insurers.

4 (b) To the extent that an agent is used, he shall
 5 report and pay the taxes for the premiums for risks that he
 6 has placed with or on behalf of a risk retention group not
 7 chartered in this state.

8 (c) To the extent that an agent is not used or fails
 9 to pay the tax, each risk retention group shall pay the tax
 10 for risks insured within the state. Further, each risk
 11 retention group shall report all premiums paid to it for
 12 risks insured within the state.

13 (4) Each risk retention group, its agents, and its
 14 representatives shall comply with Title 33, chapter 18, part
 15 2.

16 (5) Each risk retention group shall comply with the
 17 provisions of Title 33, chapter 18, part 2, regarding
 18 deceptive, false, or fraudulent acts or practices. However,
 19 if the commissioner seeks an injunction regarding such
 20 conduct, the injunction must be obtained from a court of
 21 competent jurisdiction.

22 (6) Each risk retention group shall submit to an
 23 examination by the commissioner to determine its financial
 24 condition if the insurance regulatory official of the
 25 jurisdiction where the group is chartered has not initiated

1 an examination or does not initiate an examination within 60
 2 days after a request by the commissioner. The examination
 3 must be coordinated to avoid unjustified repetition and be
 4 conducted in an expeditious manner in accordance with the
 5 national association of insurance commissioners examiners
 6 handbook.

7 (7) Each policy issued by a risk retention group must
 8 contain, in 10-point type on the front page and the
 9 declaration page, the following notice:

10 "NOTICE

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

16 (8) The following acts by a risk retention group are
 17 prohibited:

18 (a) the solicitation or sale of insurance by a risk
 19 retention group to any person who is not eligible for
 20 membership in the group; and

21 (b) the solicitation or sale of insurance by or
 22 operation of a risk retention group that is in a hazardous
 23 financial condition or is financially impaired.

24 (9) A risk retention group is not allowed to do
 25 business in this state if an insurer is directly or

1 indirectly a member or owner of the risk retention group,
 2 other than in the case of a risk retention group all of
 3 whose members are insurers.

4 (10) A risk retention group may not offer insurance
 5 policy coverage declared unlawful by the Montana supreme
 6 court.

7 (11) A risk retention group not chartered in this state
 8 and doing business in this state must comply with a lawful
 9 order issued in a voluntary dissolution proceeding or in a
 10 delinquency proceeding commenced by the insurance regulatory
 11 official of any state if there has been a finding of
 12 financial impairment after an examination under [section
 13 4(6)].

14 Section 5. Compulsory associations. (1) A risk
 15 retention group may not join or contribute financially to
 16 any insurance insolvency guaranty fund or similar mechanism
 17 in this state. In addition, a risk retention group or its
 18 insureds may not receive any benefit from any such fund for
 19 claims arising out of the operations of the risk retention
 20 group.

21 (2) A risk retention group shall participate in this
 22 state's joint underwriting associations, mandatory liability
 23 pools, and similar mechanisms as provided by Title 33,
 24 chapter 8.

25 Section 6. Countersignature not required. A policy of

1 insurance issued to a risk retention group or member of that
 2 group need not be required to be countersigned as provided
 3 in 33-17-1111.

4 Section 7. Purchasing groups -- exemption from certain
 5 laws relating to group purchase of insurance. A purchasing
 6 group meeting the criteria established under the provisions
 7 of the federal Liability Risk Retention Act of 1986 is
 8 exempt from any law of this state relating to the formation
 9 of groups for the purchase of insurance, prohibition of
 10 group purchasing, or any law that would discriminate against
 11 a purchasing group or its members. In addition, an insurer
 12 is exempt from any law of this state that prohibits
 13 providing or offering to provide to a purchasing group or
 14 its members advantages based on their loss and expense
 15 experience not afforded to other persons with respect to
 16 rates, policy forms, coverages, or other matters. A
 17 purchasing group is subject to all other applicable laws of
 18 this state.

19 Section 8. Notice and registration requirements of
 20 purchasing groups. (1) A purchasing group that intends to
 21 do business in this state shall furnish notice to the
 22 commissioner that:

- 23 (a) identifies the state where the group is domiciled;
- 24 (b) specifies the lines and classifications of
- 25 liability insurance that the purchasing group intends to

1 purchase;

2 (c) identifies the insurer from which the purchasing
 3 group intends to purchase its insurance and the domicile of
 4 the insurer;

5 (d) identifies the principal place of business of the
 6 purchasing group; and

7 (e) provides information required by the commissioner
 8 to verify that the purchasing group is qualified under
 9 [section 2+7}(6)].

10 (2) The purchasing group shall register with and
 11 designate the commissioner as its agent solely for the
 12 purpose of receiving service of legal documents or process.
 13 However, such requirements do not apply in the case of a
 14 purchasing group:

15 (a) (i) that was domiciled before April 2, 1986, IN
 16 ANY STATE OF THE UNITED STATES; and

17 (ii) that was domiciled on and after October 27, 1986,
 18 in any state of the United States;

19 (b) (i) that, before October 26 27, 1986, purchased
 20 insurance from an insurer licensed in any state; and

21 (ii) that, since October 26 27, 1986, purchased its
 22 insurance from an insurer licensed in any state;

23 (c) that was a purchasing group under the requirements
 24 of the federal Product Liability Risk Retention Act of 1981
 25 before October 26 27, 1986; and

1 (d) that does not purchase insurance that was not
2 authorized for purposes of an exemption under the federal
3 Product Liability Risk Retention Act of 1981, as in effect
4 before October 27, 1986.

5 Section 9. Restriction on insurance purchased by
6 purchasing groups. (1) A purchasing group may not purchase
7 insurance from a risk retention group that is not chartered
8 in a state or from an insurer not authorized in the state
9 where the purchasing group is located, unless the purchase
10 is effected through a licensed agent or broker acting
11 pursuant to the surplus lines laws and regulations of that
12 state.

13 (2) For purposes of subsection (1), the state ~~in-which~~
14 WHERE a purchasing group is located is each state ~~in-which~~
15 WHERE a member of the purchasing group has a risk resident,
16 located, or to be performed.

17 Section 10. Administrative and procedural authority
18 regarding risk retention groups and purchasing groups. The
19 commissioner is authorized to use any powers established
20 under ~~{this-act}~~ THIS TITLE to enforce the laws of this
21 state so long as those powers are not specifically preempted
22 by the federal Liability Risk Retention Act of 1986. The
23 commissioner's powers include but are not limited to the
24 commissioner's administrative authority to investigate,
25 issue subpoenas, conduct depositions and hearings, issue

1 orders, and impose penalties. With regard to any
2 investigation, administrative proceedings, or litigation,
3 the commissioner may rely on the procedural law and
4 regulations of the state. The injunctive authority of the
5 commissioner in regard to risk retention groups is
6 restricted by the requirement that any injunction be issued
7 by a court of competent jurisdiction.

8 Section 11. Penalties. A risk retention group that
9 violates any provision of [sections 3 through 12] is subject
10 to fines and penalties applicable to licensed insurers
11 generally, including revocation of its license to do
12 business in this state.

13 Section 12. Duty of agents to obtain license. A person
14 acting or offering to act as an agent for a risk retention
15 group or purchasing group, that solicits members, sells
16 insurance coverage, purchases coverage for its members
17 located within the state, or otherwise does business in this
18 state shall, before commencing such activity, obtain a
19 license from the commissioner.

20 Section 13. Enforceability of orders issued in United
21 States district court. An order issued by any district court
22 of the United States enjoining a risk retention group from
23 soliciting or selling insurance or operating in any state,
24 territory, or possession of the United States upon a finding
25 that such a group is in a hazardous financial condition, is

1 enforceable in the courts of this state.

2 Section 14. Rules and regulations. The commissioner
3 may make and amend any reasonable rules relating to risk
4 retention groups and purchasing groups necessary or
5 desirable to carry out the provisions of [sections 3 through
6 12].

7 Section 15. Codification instruction. Sections 1
8 through 14 are intended to be codified as an integral part
9 of Title 33, and the provisions of Title 33 apply to
10 sections 1 through 14.

11 SECTION 16. SEVERABILITY. IF A PART OF THIS ACT IS
12 INVALID, ALL VALID PARTS THAT ARE SEVERABLE FROM THE INVALID
13 PART REMAIN IN EFFECT. IF A PART OF THIS ACT IS INVALID IN
14 ONE OR MORE OF ITS APPLICATIONS, THE PART REMAINS IN EFFECT
15 IN ALL VALID APPLICATIONS THAT ARE SEVERABLE FROM THE
16 INVALID APPLICATIONS.

17 Section 17. Effective date. This act is effective on
18 passage and approval.

-End-

1 HOUSE BILL NO. 439

2 INTRODUCED BY GRADY, MILES, THAYER

3 BY REQUEST OF THE STATE AUDITOR

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO THE
6 REGULATION OF RISK RETENTION GROUPS AND PURCHASING GROUPS;
7 AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 Section 1. Purpose. The purpose of [sections 1 through
11 14] is to regulate the formation and operation of risk
12 retention groups in this state formed pursuant to the
13 provisions of the federal Liability Risk Retention Act of
14 1986.

15 Section 2. Definitions. As used in [sections 1 through
16 14], the following definitions apply:

17 ~~{1}--"Commissioner"--means--the--commissioner--of--insurance~~
18 ~~of--this--state--or--the--insurance--regulatory--official--in--any~~
19 ~~other--state--~~

20 ~~{2}{1}~~ "Domicile", for purposes of determining the
21 state where a purchasing group is domiciled, means:

22 (a) for a corporation, the state where the purchasing
23 group is incorporated; and

24 (b) for an unincorporated entity, the state of its
25 principal place of business.

1 ~~{3}{2}~~ "Hazardous financial condition" means that,
2 based on its present or reasonably anticipated financial
3 condition, a risk retention group, although not yet
4 financially impaired or insolvent, is unlikely to be able
5 to:

6 (a) meet obligations to policyholders with respect to
7 known claims and reasonably anticipated claims; or

8 (b) pay other obligations in the normal course of
9 business.

10 ~~{4}{3}~~ "Insurance" means primary insurance, excess
11 insurance, reinsurance, surplus line insurance, and any
12 other arrangement for shifting and distributing risk that is
13 determined to be insurance under the laws of this state.

14 ~~{5}{4}~~ (a) "Liability" means legal liability for
15 damages, including costs of defense, legal costs and fees,
16 and other claims expenses, because of injuries to other
17 persons, damage to their property, or other damage or loss
18 to other persons resulting from or arising out of:

19 (i) a business, whether profit or nonprofit, trade,
20 product, services (including professional services),
21 premises, or operations; or

22 (ii) an activity of any state or local government, or
23 an agency or political subdivision thereof.

24 (b) The term does not include personal risk liability
25 or an employer's liability with respect to its employees

1 other than legal liability under the federal Employers'
 2 Liability Act (45 U.S.C. 51, et seq.). As used in this
 3 subsection, personal risk liability means liability for
 4 damages because of injury to any person, damage to property,
 5 or other loss or damage resulting from personal, familial,
 6 or household responsibilities or activities rather than from
 7 responsibilities or activities referred to in subsection
 8 ~~†5†~~(4)(a).

9 ~~†6†~~(5) "Plan of operation or a feasibility study"
 10 means an analysis that presents the expected activities and
 11 results of a risk retention group, including at a minimum:

12 (a) the coverages, deductibles, coverage limits,
 13 rates, and rating classification systems for each line of
 14 insurance the group intends to offer;

15 (b) historical and expected loss experience of the
 16 proposed members and national experience of similar
 17 exposures to the extent this experience is reasonably
 18 available;

19 (c) pro forma financial statements and projections;

20 (d) appropriate opinions by a qualified independent
 21 casualty actuary, including a determination of minimum
 22 premium or participation levels required to commence
 23 operations and to prevent a hazardous financial condition;

24 (e) identification of management, underwriting
 25 procedures, managerial oversight methods, and investment

1 policies; and

2 (f) other matters as may be prescribed by the
 3 commissioner for liability insurance companies authorized by
 4 the insurance laws of the state where the risk retention
 5 group is chartered.

6 ~~†7†~~(6) "Purchasing group" means a group that:

7 (a) has as one of its purposes the purchase of
 8 liability insurance on a group basis;

9 (b) purchases liability insurance only for its group
 10 members and only to cover their similar or related liability
 11 exposure, as described in subsection ~~†7†~~(6)(c);

12 (c) is composed of members whose businesses or
 13 activities are similar or related with respect to the
 14 liability to which members are exposed by virtue of any
 15 related, similar, or common business, trade, product,
 16 services, premises, or operations; and

17 (d) is domiciled in any state.

18 ~~†8†~~(7) "Risk retention group" means a corporation or
 19 other limited liability association formed under the laws of
 20 any state, Bermuda, or the Cayman Islands:

21 (a) whose primary activity consists of assuming and
 22 spreading all or any portion of the liability exposure of
 23 its group members;

24 (b) that is organized for the primary purpose of
 25 conducting the activity described under subsection

1 ~~8~~(7)(a):

2 (c) (i) that is chartered and licensed as a liability
3 insurance company and authorized to engage in the business
4 of insurance under the laws of any state; or

5 (ii) that, before January 1, 1985, was chartered or
6 licensed and authorized to engage in the business of
7 insurance under the laws of Bermuda or the Cayman Islands
8 and, before that date, had certified to the insurance
9 regulatory official of at least one state that it satisfied
10 the capitalization requirements of that state. However, such
11 group is considered to be a risk retention group only if it
12 has been engaged in business continuously since January 1,
13 1985, and only for the purpose of continuing to provide
14 insurance to cover product liability or completed operations
15 liability.

16 (A) For purposes of this subsection ~~8~~ (7),
17 "completed operations liability" means liability arising out
18 of the installation, maintenance, or repair of any product
19 at a site which is not owned or controlled by a person who:

20 (I) performs that work; or

21 (II) hires an independent contractor to perform that
22 work; but shall include liability for activities which are
23 completed or abandoned before the date of the occurrence
24 giving rise to the liability.

25 (B) For purposes of this subsection ~~8~~ (7), "product

1 liability" means liability for damages because of any
2 personal injury, death, emotional harm, consequential
3 economic damage, or property damage (including damages
4 resulting from the loss of use of property) arising out of
5 the manufacture, design, importation, distribution,
6 packaging, labeling, lease, or sale of a product, but does
7 not include the liability of any person for those damages if
8 the product involved was in the possession of such a person
9 when the incident giving rise to the claim occurred.

10 (d) that does not exclude any person from membership
11 in the group solely to provide to members of the group a
12 competitive advantage over such person;

13 (e) (i) that has as its members only persons who have
14 an ownership interest in the group and that has as its
15 owners only persons who are members and who are provided
16 insurance by the risk retention group; or

17 (ii) that has as its sole member and sole owner an
18 organization that is owned by persons who are provided
19 insurance by the risk retention group;

20 (f) whose members are engaged in businesses or
21 activities that are similar or related with respect to the
22 liability to which the members are exposed by virtue of any
23 related, similar, or common business, trade, product,
24 service, premises, or operation;

25 (g) whose activities do not include the provision of

1 insurance other than:

2 (i) liability insurance for assuming and spreading all
3 or any portion of the liability of its group members; and

4 (ii) reinsurance with respect to the liability of any
5 other risk retention group or member of such other group
6 that is engaged in businesses or activities so that such
7 group or member meets the requirement described in
8 subsection ~~{8}~~(7)(f) for membership in the risk retention
9 group that provides the reinsurance; and

10 (h) whose name includes the phrase "risk retention
11 group".

12 ~~{9}~~(8) "State" means any state of the United States or
13 the District of Columbia.

14 Section 3. Chartering -- licensing -- plan of
15 operation. A risk retention group seeking to be chartered in
16 this state must be chartered and licensed as a casualty
17 insurer pursuant to the insurance laws of this state and,
18 except as provided in [sections 3 and 5 through 12], must
19 comply with all of the laws, rules, regulations, and
20 requirements applicable to such insurers chartered and
21 authorized in this state and with [section 4] to the extent
22 such requirements are not a limitation on laws, rules,
23 regulations, or requirements of this state. Before it may
24 offer insurance in any state, the risk retention group shall
25 also submit for approval to the commissioner a plan of

1 operation of OR a feasibility study and revisions of such
2 plan or study if the group intends to offer any additional
3 lines of liability insurance.

4 Section 4. Risk retention groups not chartered in this
5 state. A risk retention group chartered in a state other
6 than this state and seeking to do business as a risk
7 retention group in this state must observe and abide by the
8 laws of this state as follows:

9 (1) Before offering insurance in this state, a risk
10 retention group shall submit to the commissioner:

11 (a) a statement identifying the state or states where
12 the risk retention group is chartered and authorized as a
13 casualty insurer, date of chartering, its principal place of
14 business, and such other information, including information
15 on its membership, as the commissioner requires to verify
16 that the risk retention group is qualified under [section
17 ~~2~~(7)];

18 (b) a copy of its plan of operation or a feasibility
19 study and revisions of such plan or study submitted to its
20 state of domicile. However, this provision relating to the
21 submission of a plan of operation or a feasibility study
22 does not apply with respect to any line or classification of
23 liability insurance that was defined in the federal Product
24 Liability Risk Retention Act of 1981 before October 27,
25 1986, and that was offered before that date by a risk

1 retention group that had been chartered and operated for not
 2 less than 3 years before that date; and

3 (c) a statement of registration that designates the
 4 commissioner as its agent for the purpose of receiving
 5 service of legal documents or process.

6 (2) A risk retention group doing business in this
 7 state shall submit to the commissioner:

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

15 (b) a copy of each examination of the risk retention
 16 group as certified by the insurance regulatory official of
 17 the state in which the examination was conducted or public
 18 official conducting the examination;

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

22 (d) such information as may be required to verify the
 23 group's continuing qualification as a risk retention group
 24 under {section 2407(7)}.

25 (3) (a) All premiums paid for coverage within this

1 state to risk retention groups are subject to taxation at
 2 the same rate and to the same interest, fines, and penalties
 3 for nonpayment that apply to foreign admitted insurers.

4 (b) To the extent that an agent is used, he shall
 5 report and pay the taxes for the premiums for risks that he
 6 has placed with or on behalf of a risk retention group not
 7 chartered in this state.

8 (c) To the extent that an agent is not used or fails
 9 to pay the tax, each risk retention group shall pay the tax
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 11 retention group shall report all premiums paid to it for
 12 risks insured within the state.

13 (4) Each risk retention group, its agents, and its
 14 representatives shall comply with Title 33, chapter 18, part
 15 2.

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 17 provisions of Title 33, chapter 18, part 2, regarding
 18 deceptive, false, or fraudulent acts or practices. However,
 19 if the commissioner seeks an injunction regarding such
 20 conduct, the injunction must be obtained from a court of
 21 competent jurisdiction.

22 (6) Each risk retention group shall submit to an
 23 examination by the commissioner to determine its financial
 24 condition if the insurance regulatory official of the
 25 jurisdiction where the group is chartered has not initiated

1 an examination or does not initiate an examination within 60
 2 days after a request by the commissioner. The examination
 3 must be coordinated to avoid unjustified repetition and be
 4 conducted in an expeditious manner in accordance with the
 5 national association of insurance commissioners examiners
 6 handbook.

7 (7) Each policy issued by a risk retention group must
 8 contain, in 10-point type on the front page and the
 9 declaration page, the following notice:

10 "NOTICE

11 This policy is issued by your risk retention group.
 12 Your risk retention group may not be subject to all of the
 13 insurance laws and regulations of your state. State
 14 insurance insolvency guaranty funds are not available for
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 17 prohibited:

18 (a) the solicitation or sale of insurance by a risk
 19 retention group to any person who is not eligible for
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21 (b) the solicitation or sale of insurance by or
 22 operation of a risk retention group that is in a hazardous
 23 financial condition or is financially impaired.

24 (9) A risk retention group is not allowed to do
 25 business in this state if an insurer is directly or

1 indirectly a member or owner of the risk retention group,
 2 other than in the case of a risk retention group all of
 3 whose members are insurers.

4 (10) A risk retention group may not offer insurance
 5 policy coverage declared unlawful by the Montana supreme
 6 court.

7 (11) A risk retention group not chartered in this state
 8 and doing business in this state must comply with a lawful
 9 order issued in a voluntary dissolution proceeding or in a
 10 delinquency proceeding commenced by the insurance regulatory
 11 official of any state if there has been a finding of
 12 financial impairment after an examination under {section
 13 4(6)}.

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 15 retention group may not join or contribute financially to
 16 any insurance insolvency guaranty fund or similar mechanism
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 18 insureds may not receive any benefit from any such fund for
 19 claims arising out of the operations of the risk retention
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 9 of groups for the purchase of insurance, prohibition of
 10 group purchasing, or any law that would discriminate against
 11 a purchasing group or its members. In addition, an insurer
 12 is exempt from any law of this state that prohibits
 13 providing or offering to provide to a purchasing group or
 14 its members advantages based on their loss and expense
 15 experience not afforded to other persons with respect to
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1 purchase;

2 (c) identifies the insurer from which the purchasing
 3 group intends to purchase its insurance and the domicile of
 4 the insurer;

5 (d) identifies the principal place of business of the
 6 purchasing group; and

7 (e) provides information required by the commissioner
 8 to verify that the purchasing group is qualified under
 9 [section 2(7)(6)].

10 (2) The purchasing group shall register with and
 11 designate the commissioner as its agent solely for the
 12 purpose of receiving service of legal documents or process.
 13 However, such requirements do not apply in the case of a
 14 purchasing group:

15 (a) (i) that was domiciled before April 2, 1986, IN
 16 ANY STATE OF THE UNITED STATES; and

17 (ii) that was domiciled on and after October 27, 1986,
 18 in any state of the United States;

19 (b) (i) that, before October 26 27, 1986, purchased
 20 insurance from an insurer licensed in any state; and

21 (ii) that, since October 26 27, 1986, purchased its
 22 insurance from an insurer licensed in any state;

23 (c) that was a purchasing group under the requirements
 24 of the federal Product Liability Risk Retention Act of 1981
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2 authorized for purposes of an exemption under the federal
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4 before October 27, 1986.

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24 commissioner's administrative authority to investigate,
25 issue subpoenas, conduct depositions and hearings, issue

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12 business in this state.

13 Section 12. Duty of agents to obtain license. A person
14 acting or offering to act as an agent for a risk retention
15 group or purchasing group, that solicits members, sells
16 insurance coverage, purchases coverage for its members
17 located within the state, or otherwise does business in this
18 state shall, before commencing such activity, obtain a
19 license from the commissioner.

20 Section 13. Enforceability of orders issued in United
21 States district court. An order issued by any district court
22 of the United States enjoining a risk retention group from
23 soliciting or selling insurance or operating in any state,
24 territory, or possession of the United States upon a finding
25 that such a group is in a hazardous financial condition, is

1 enforceable in the courts of this state.

2 Section 14. Rules and regulations. The commissioner
3 may make and amend any reasonable rules relating to risk
4 retention groups and purchasing groups necessary or
5 desirable to carry out the provisions of [sections 3 through
6 12].

7 Section 15. Codification instruction. Sections 1
8 through 14 are intended to be codified as an integral part
9 of Title 33, and the provisions of Title 33 apply to
10 sections 1 through 14.

11 SECTION 16. SEVERABILITY. IF A PART OF THIS ACT IS
12 INVALID, ALL VALID PARTS THAT ARE SEVERABLE FROM THE INVALID
13 PART REMAIN IN EFFECT. IF A PART OF THIS ACT IS INVALID IN
14 ONE OR MORE OF ITS APPLICATIONS, THE PART REMAINS IN EFFECT
15 IN ALL VALID APPLICATIONS THAT ARE SEVERABLE FROM THE
16 INVALID APPLICATIONS.

17 Section 17. Effective date. This act is effective on
18 passage and approval.

-End-

STANDING COMMITTEE REPORT

SCRHB439

March 5, 1987

SENATE

MR. PRESIDENT

Business and Industries

We, your committee on House Bill 439

having had under consideration No. 439

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reading copy () color

GRADY (THAYER)

CODIFYING LAWS ON RISK RETENTION GROUPS AND PURCHASING GROUPS

Respectfully report as follows: That House Bill No. 439

BE AMENDED AS FOLLOWS:

1. Title, following line 6.

Insert: "AMENDING SECTION 33-2-708, MCA"

2. Page 1, line 12.

Following: "groups"

Insert: "and purchasing groups"

3. Page 17, following line 6.

Insert: "Section 15. Section 33-2-708, MCA, is amended to read:

"33-2-708. Fees and licenses. (1) The commissioner shall collect in advance and the persons so served shall so pay to the commissioner the following fees and licenses:

(a) certificates of authority:

(i) for filing applications for original certificates of authority, articles of incorporation (except original articles of incorporation of domestic insurers as provided in subsection (b) below) and other charter documents, bylaws, financial statement, examination report, power of attorney to the commissioner, and all other documents and filings required in connection with such application and for issuance of an original certificate of authority, if issued:

- (A) domestic insurers \$ 30.00
(B) foreign insurers 300.00
(ii) annual continuation of certificate of authority 300.00
(iii) reinstatement of certificate of authority 25.00
(b) articles of incorporation:

- (i) filing original articles of incorporation of domestic insurer, exclusive of fees required to be paid by the corporation to the secretary of state \$ 20.00
(ii) filing amendment of articles of incorporation, domestic and foreign insurers, exclusive of fees required to be paid to the secretary of state by a domestic corporation 10.00
(c) filing bylaws or amendment thereto where required 5.00
(d) filing annual statement of insurer, other than as part of application for original certificate of authority 25.00
(e) resident agent's license:
(i) application for original license, including issuance of license, if issued (life and/or disability) 10.00
(ii) application for original license, including issuance of license, if issued (other than life and/or disability) 10.00
(iii) appointment of agent, each insurer 10.00
(iv) annual renewal, each insurer 10.00
(v) temporary license 10.00
(vi) amendment of license (excluding additions thereto) or reissuance of master license 10.00
(f) nonresident agent's license:
(i) application for original license, including issuance of license, if issued (life and/or disability) 100.00
(ii) application for original license, including issuance of license, if issued (other than life and/or disability) 100.00
(iii) appointment of agent, each insurer 10.00
(iv) annual renewal, each insurer 10.00
(v) amendment of license (excluding additions thereto) or reissuance of master license 10.00
(g) solicitor's license:
(i) application for original license, including issuance of license, if issued 5.00
(ii) annual renewal of license 5.00
(h) examination for license as agent or solicitor, each examination 10.00
(i) surplus line agent's license:
(i) application for original license and for issuance of license, if issued 25.00
(ii) annual renewal of license 25.00
(j) adjuster's license:
(i) application for original license and for issuance of license, if issued 10.00
(ii) annual renewal of license 10.00
(k) insurance vending machine license, each machine, each year 10.00
(l) commissioner's certificate under seal (except when on certificates of authority or licenses) 3.00
(m) copies of documents on file in the commissioner's office, per page .50
(n) policy forms:
(i) filing each policy form 25.00
(ii) filing each application, rider, endorsement, amendment, insert page, schedule of rates, and clarification of risks 10.00
(iii) maximum charge if policy and all forms submitted at one time or resubmitted for approval within 180 days 50.00

XXXXX

XXXXXXXXXX

CONTINUED

Chairman.

STATE PRINT CO. Helena, Mont.

CONTINUED

Chairman.

March 5, 1987

March 5, 1987

(2) The commissioner shall promptly deposit with the state treasurer to the credit of the general fund of this state all fines and penalties and, those amounts received pursuant to 33-2-311, 33-2-705, and 33-2-706, and any fees and examination and miscellaneous charges received pursuant to [sections 1 through 14] that are collected by him pursuant to Title 33 and the rules adopted thereunder.

(3) All fees are considered fully earned when received. In the event of overpayment, only those amounts in excess of \$10 will be refunded.

(4) All fees and examination and miscellaneous charges, except fines or penalties or those amounts received pursuant to 33-2-311, 33-2-705, or 33-2-706, collected by the commissioner pursuant to Title 33 and the rules adopted thereunder must be deposited in the insurance regulatory trust account pursuant to 17-2-121 through 17-2-123."*

Renumber: subsequent sections

4. Insert: "NEW SECTION." preceding "Section" in the following locations:

- Page 1, lines 10 and 15.
- Page 7, line 14.
- Page 8, line 4
- Page 12, lines 14 and 25.
- Page 13, lines 4 and 19.
- Page 15, lines 5 and 17.
- Page 16, lines 8, 13, and 20.
- Page 17, lines 2, 7, 11, and 17.

MR. PRESIDENT:

WE, YOUR COMMITTEE ON BUSINESS AND INDUSTRY HAVING HAD UNDER CONSIDERATION HOUSE BILL NO. 439, ATTACH THE FOLLOWING STATEMENT OF INTENT:

50th Legislature

LC 1042/si

STATEMENT OF INTENT
HB BILL NO. 439

A statement of intent is required for this bill because section 14 authorizes the commissioner of insurance of the state of Montana to make and amend reasonable rules relating to risk retention groups and purchasing groups as may be necessary or desirable to carry out the provisions of the bill. The legislature intends that the rules, which the commissioner adopts to implement this bill, be designed principally to protect Montana insurance consumers while making liability insurance more available in this state. The legislature further intends that the commissioner adopt those rules in accordance with 33-1-313, MCA, which grants the commissioner general rulemaking authority and which permits the commissioner:

- (1) to make only reasonable rules that do not extend, modify, or conflict with any law of this state or with any reasonable implication of those laws; and
- (2) to make or amend those rules only after a hearing of which notice has been given as required by 33-1-703, MCA.

AND AS AMENDED,

BE CONCURRED IN

STATEMENT OF INTENT ADOPTED AND ATTACHED


Senator Kolstad, CHAIRMAN

1 STATEMENT OF INTENT

2 HOUSE BILL 439

3 House Business and Industries Committee

4

5 A statement of intent is required for this bill because
6 section 14 authorizes the commissioner of insurance of the
7 state of Montana to make and amend reasonable rules relating
8 to risk retention groups and purchasing groups as may be
9 necessary or desirable to carry out the provisions of the
10 bill. The legislature intends that the rules, which the
11 commissioner adopts to implement this bill, be designed
12 principally to protect Montana insurance consumers while
13 making liability insurance more available in this state. The
14 legislature further intends that the commissioner adopt
15 those rules in accordance with 33-1-313, MCA, which grants
16 the commissioner general rulemaking authority and which
17 permits the commissioner:

18 (1) to make only reasonable rules that do not extend,
19 modify, or conflict with any law of this state or with any
20 reasonable implication of those laws; and

21 (2) to make or amend those rules only after a hearing
22 of which notice has been given as required by 33-1-703, MCA.

REFERENCE BILL
HB-439

1 HOUSE BILL NO. 439

2 INTRODUCED BY GRADY, MILES, THAYER

3 BY REQUEST OF THE STATE AUDITOR

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO THE
6 REGULATION OF RISK RETENTION GROUPS AND PURCHASING GROUPS;
7 AMENDING SECTION 33-2-708, MCA; AND PROVIDING AN IMMEDIATE
8 EFFECTIVE DATE."

9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 NEW SECTION. Section 1. Purpose. The purpose of
12 [sections 1 through 14] is to regulate the formation and
13 operation of risk retention groups AND PURCHASING GROUPS in
14 this state formed pursuant to the provisions of the federal
15 Liability Risk Retention Act of 1986.

16 NEW SECTION. Section 2. Definitions. As used in
17 [sections 1 through 14], the following definitions apply:

18 ~~{1}--"Commissioner" means the commissioner of insurance~~
19 ~~of this state or the insurance regulatory official in any~~
20 ~~other state.~~

21 ~~{2}~~(1) "Domicile", for purposes of determining the
22 state where a purchasing group is domiciled, means:

23 (a) for a corporation, the state where the purchasing
24 group is incorporated; and

25 (b) for an unincorporated entity, the state of its

1 principal place of business.

2 ~~{3}~~(2) "Hazardous financial condition" means that,
3 based on its present or reasonably anticipated financial
4 condition, a risk retention group, although not yet
5 financially impaired or insolvent, is unlikely to be able
6 to:

7 (a) meet obligations to policyholders with respect to
8 known claims and reasonably anticipated claims; or

9 (b) pay other obligations in the normal course of
10 business.

11 ~~{4}~~(3) "Insurance" means primary insurance, excess
12 insurance, reinsurance, surplus line insurance, and any
13 other arrangement for shifting and distributing risk that is
14 determined to be insurance under the laws of this state.

15 ~~{5}~~(4) (a) "Liability" means legal liability for
16 damages, including costs of defense, legal costs and fees,
17 and other claims expenses, because of injuries to other
18 persons, damage to their property, or other damage or loss
19 to other persons resulting from or arising out of:

20 (i) a business, whether profit or nonprofit, trade,
21 product, services (including professional services),
22 premises, or operations; or

23 (ii) an activity of any state or local government, or
24 an agency or political subdivision thereof.

25 (b) The term does not include personal risk liability

1 or an employer's liability with respect to its employees
 2 other than legal liability under the federal Employers'
 3 Liability Act (45 U.S.C. 51, et seq.). As used in this
 4 subsection, personal risk liability means liability for
 5 damages because of injury to any person, damage to property,
 6 or other loss or damage resulting from personal, familial,
 7 or household responsibilities or activities rather than from
 8 responsibilities or activities referred to in subsection
 9 ~~f5}{4}(a).~~

10 ~~f6}{5} "Plan of operation or a feasibility study"
 11 means an analysis that presents the expected activities and
 12 results of a risk retention group, including at a minimum:~~

13 (a) the coverages, deductibles, coverage limits,
 14 rates, and rating classification systems for each line of
 15 insurance the group intends to offer;

16 (b) historical and expected loss experience of the
 17 proposed members and national experience of similar
 18 exposures to the extent this experience is reasonably
 19 available;

20 (c) pro forma financial statements and projections;

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

25 (e) identification of management, underwriting

1 procedures, managerial oversight methods, and investment
 2 policies; and

3 (f) other matters as may be prescribed by the
 4 commissioner for liability insurance companies authorized by
 5 the insurance laws of the state where the risk retention
 6 group is chartered.

7 ~~f7}{6} "Purchasing group" means a group that:~~

8 (a) has as one of its purposes the purchase of
 9 liability insurance on a group basis;

10 (b) purchases liability insurance only for its group
 11 members and only to cover their similar or related liability
 12 exposure, as described in subsection ~~f7}{6}(c);~~

13 (c) is composed of members whose businesses or
 14 activities are similar or related with respect to the
 15 liability to which members are exposed by virtue of any
 16 related, similar, or common business, trade, product,
 17 services, premises, or operations; and

18 (d) is domiciled in any state.

19 ~~f8}{7} "Risk retention group" means a corporation or
 20 other limited liability association formed under the laws of
 21 any state, Bermuda, or the Cayman Islands:~~

22 (a) whose primary activity consists of assuming and
 23 spreading all or any portion of the liability exposure of
 24 its group members;

25 (b) that is organized for the primary purpose of

1 conducting the activity described under subsection
 2 ~~†8†~~(7)(a);

3 (c) (i) that is chartered and licensed as a liability
 4 insurance company and authorized to engage in the business
 5 of insurance under the laws of any state; or

6 (ii) that, before January 1, 1985, was chartered or
 7 licensed and authorized to engage in the business of
 8 insurance under the laws of Bermuda or the Cayman Islands
 9 and, before that date, had certified to the insurance
 10 regulatory official of at least one state that it satisfied
 11 the capitalization requirements of that state. However, such
 12 group is considered to be a risk retention group only if it
 13 has been engaged in business continuously since January 1,
 14 1985, and only for the purpose of continuing to provide
 15 insurance to cover product liability or completed operations
 16 liability.

17 (A) For purposes of this subsection ~~†8†~~ (7),
 18 "completed operations liability" means liability arising out
 19 of the installation, maintenance, or repair of any product
 20 at a site which is not owned or controlled by a person who:

21 (I) performs that work; or

22 (II) hires an independent contractor to perform that
 23 work; but shall include liability for activities which are
 24 completed or abandoned before the date of the occurrence
 25 giving rise to the liability.

1 (B) For purposes of this subsection ~~†8†~~ (7), "product
 2 liability" means liability for damages because of any
 3 personal injury, death, emotional harm, consequential
 4 economic damage, or property damage (including damages
 5 resulting from the loss of use of property) arising out of
 6 the manufacture, design, importation, distribution,
 7 packaging, labeling, lease, or sale of a product, but does
 8 not include the liability of any person for those damages if
 9 the product involved was in the possession of such a person
 10 when the incident giving rise to the claim occurred.

11 (d) that does not exclude any person from membership
 12 in the group solely to provide to members of the group a
 13 competitive advantage over such person;

14 (e) (i) that has as its members only persons who have
 15 an ownership interest in the group and that has as its
 16 owners only persons who are members and who are provided
 17 insurance by the risk retention group; or

18 (ii) that has as its sole member and sole owner an
 19 organization that is owned by persons who are provided
 20 insurance by the risk retention group;

21 (f) whose members are engaged in businesses or
 22 activities that are similar or related with respect to the
 23 liability to which the members are exposed by virtue of any
 24 related, similar, or common business, trade, product,
 25 service, premises, or operation;

1 (g) whose activities do not include the provision of
2 insurance other than:

3 (i) liability insurance for assuming and spreading all
4 or any portion of the liability of its group members; and

5 (ii) reinsurance with respect to the liability of any
6 other risk retention group or member of such other group
7 that is engaged in businesses or activities so that such
8 group or member meets the requirement described in
9 subsection ~~(8)(7)(f)~~ for membership in the risk retention
10 group that provides the reinsurance; and

11 (h) whose name includes the phrase "risk retention
12 group".

13 ~~(9)(8)~~ "State" means any state of the United States or
14 the District of Columbia.

15 NEW SECTION. Section 3. Chartering -- licensing --
16 plan of operation. A risk retention group seeking to be
17 chartered in this state must be chartered and licensed as a
18 casualty insurer pursuant to the insurance laws of this
19 state and, except as provided in [sections 3 and 5 through
20 12], must comply with all of the laws, rules, regulations,
21 and requirements applicable to such insurers chartered and
22 authorized in this state and with [section 4] to the extent
23 such requirements are not a limitation on laws, rules,
24 regulations, or requirements of this state. Before it may
25 offer insurance in any state, the risk retention group shall

1 also submit for approval to the commissioner a plan of
2 operation of OR a feasibility study and revisions of such
3 plan or study if the group intends to offer any additional
4 lines of liability insurance.

5 NEW SECTION. Section 4. Risk retention groups not
6 chartered in this state. A risk retention group chartered in
7 a state other than this state and seeking to do business as
8 a risk retention group in this state must observe and abide
9 by the laws of this state as follows:

10 (1) Before offering insurance in this state, a risk
11 retention group shall submit to the commissioner:

12 (a) a statement identifying the state or states where
13 the risk retention group is chartered and authorized as a
14 casualty insurer, date of chartering, its principal place of
15 business, and such other information, including information
16 on its membership, as the commissioner requires to verify
17 that the risk retention group is qualified under [section
18 ~~2(8)(7)~~];

19 (b) a copy of its plan of operation or a feasibility
20 study and revisions of such plan or study submitted to its
21 state of domicile. However, this provision relating to the
22 submission of a plan of operation or a feasibility study
23 does not apply with respect to any line or classification of
24 liability insurance that was defined in the federal Product
25 Liability Risk Retention Act of 1981 before October 27,

1 1986, and that was offered before that date by a risk
 2 retention group that had been chartered and operated for not
 3 less than 3 years before that date; and

4 (c) a statement of registration that designates the
 5 commissioner as its agent for the purpose of receiving
 6 service of legal documents or process.

7 (2) A risk retention group doing business in this
 8 state shall submit to the commissioner:

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

16 (b) a copy of each examination of the risk retention
 17 group as certified by the insurance regulatory official of
 18 the state in which the examination was conducted or public
 19 official conducting the examination;

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

23 (d) such information as may be required to verify the
 24 group's continuing qualification as a risk retention group
 25 under [section 2407(7)].

1 (3) (a) All premiums paid for coverage within this
 2 state to risk retention groups are subject to taxation at
 3 the same rate and to the same interest, fines, and penalties
 4 for nonpayment that apply to foreign admitted insurers.

5 (b) To the extent that an agent is used, he shall
 6 report and pay the taxes for the premiums for risks that he
 7 has placed with or on behalf of a risk retention group not
 8 chartered in this state.

9 (c) To the extent that an agent is not used or fails
 10 to pay the tax, each risk retention group shall pay the tax
 11 for risks insured within the state. Further, each risk
 12 retention group shall report all premiums paid to it for
 13 risks insured within the state.

14 (4) Each risk retention group, its agents, and its
 15 representatives shall comply with Title 33, chapter 18, part
 16 2.

17 (5) Each risk retention group shall comply with the
 18 provisions of Title 33, chapter 18, part 2, regarding
 19 deceptive, false, or fraudulent acts or practices. However,
 20 if the commissioner seeks an injunction regarding such
 21 conduct, the injunction must be obtained from a court of
 22 competent jurisdiction.

23 (6) Each risk retention group shall submit to an
 24 examination by the commissioner to determine its financial
 25 condition if the insurance regulatory official of the

1 jurisdiction where the group is chartered has not initiated
 2 an examination or does not initiate an examination within 60
 3 days after a request by the commissioner. The examination
 4 must be coordinated to avoid unjustified repetition and be
 5 conducted in an expeditious manner in accordance with the
 6 national association of insurance commissioners examiners
 7 handbook.

8 (7) Each policy issued by a risk retention group must
 9 contain, in 10-point type on the front page and the
 10 declaration page, the following notice:

11 "NOTICE

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

17 (8) The following acts by a risk retention group are
 18 prohibited:

19 (a) the solicitation or sale of insurance by a risk
 20 retention group to any person who is not eligible for
 21 membership in the group; and

22 (b) the solicitation or sale of insurance by or
 23 operation of a risk retention group that is in a hazardous
 24 financial condition or is financially impaired.

25 (9) A risk retention group is not allowed to do

1 business in this state if an insurer is directly or
 2 indirectly a member or owner of the risk retention group,
 3 other than in the case of a risk retention group all of
 4 whose members are insurers.

5 (10) A risk retention group may not offer insurance
 6 policy coverage declared unlawful by the Montana supreme
 7 court.

8 (11) A risk retention group not chartered in this state
 9 and doing business in this state must comply with a lawful
 10 order issued in a voluntary dissolution proceeding or in a
 11 delinquency proceeding commenced by the insurance regulatory
 12 official of any state if there has been a finding of
 13 financial impairment after an examination under [section
 14 4(6)].

15 NEW SECTION. Section 5. Compulsory associations.

16 (1) A risk retention group may not join or contribute
 17 financially to any insurance insolvency guaranty fund or
 18 similar mechanism in this state. In addition, a risk
 19 retention group or its insureds may not receive any benefit
 20 from any such fund for claims arising out of the operations
 21 of the risk retention group.

22 (2) A risk retention group shall participate in this
 23 state's joint underwriting associations, mandatory liability
 24 pools, and similar mechanisms as provided by Title 33,
 25 chapter 8.

1 NEW SECTION. Section 6. Countersignature not
2 required. A policy of insurance issued to a risk retention
3 group or member of that group need not be required to be
4 countersigned as provided in 33-17-1111.

5 NEW SECTION. Section 7. Purchasing groups --
6 exemption from certain laws relating to group purchase of
7 insurance. A purchasing group meeting the criteria
8 established under the provisions of the federal Liability
9 Risk Retention Act of 1986 is exempt from any law of this
10 state relating to the formation of groups for the purchase
11 of insurance, prohibition of group purchasing, or any law
12 that would discriminate against a purchasing group or its
13 members. In addition, an insurer is exempt from any law of
14 this state that prohibits providing or offering to provide
15 to a purchasing group or its members advantages based on
16 their loss and expense experience not afforded to other
17 persons with respect to rates, policy forms, coverages, or
18 other matters. A purchasing group is subject to all other
19 applicable laws of this state.

20 NEW SECTION. Section 8. Notice and registration
21 requirements of purchasing groups. (1) A purchasing group
22 that intends to do business in this state shall furnish
23 notice to the commissioner that:

- 24 (a) identifies the state where the group is domiciled;
25 (b) specifies the lines and classifications of

1 liability insurance that the purchasing group intends to
2 purchase;

3 (c) identifies the insurer from which the purchasing
4 group intends to purchase its insurance and the domicile of
5 the insurer;

6 (d) identifies the principal place of business of the
7 purchasing group; and

8 (e) provides information required by the commissioner
9 to verify that the purchasing group is qualified under
10 [section 2(7)(6)].

11 (2) The purchasing group shall register with and
12 designate the commissioner as its agent solely for the
13 purpose of receiving service of legal documents or process.
14 However, such requirements do not apply in the case of a
15 purchasing group:

16 (a) (i) that was domiciled before April 2, 1986, IN
17 ANY STATE OF THE UNITED STATES; and

18 (ii) that was domiciled on and after October 27, 1986,
19 in any state of the United States;

20 (b) (i) that, before October 26 27, 1986, purchased
21 insurance from an insurer licensed in any state; and

22 (ii) that, since October 26 27, 1986, purchased its
23 insurance from an insurer licensed in any state;

24 (c) that was a purchasing group under the requirements
25 of the federal Product Liability Risk Retention Act of 1981

1 before October 26 27, 1986; and

2 (d) that does not purchase insurance that was not
3 authorized for purposes of an exemption under the federal
4 Product Liability Risk Retention Act of 1981, as in effect
5 before October 27, 1986.

6 NEW SECTION. Section 9. Restriction on insurance
7 purchased by purchasing groups. (1) A purchasing group may
8 not purchase insurance from a risk retention group that is
9 not chartered in a state or from an insurer not authorized
10 in the state where the purchasing group is located, unless
11 the purchase is effected through a licensed agent or broker
12 acting pursuant to the surplus lines laws and regulations of
13 that state.

14 (2) For purposes of subsection (1), the state in-which
15 WHERE a purchasing group is located is each state in-which
16 WHERE a member of the purchasing group has a risk resident,
17 located, or to be performed.

18 NEW SECTION. Section 10. Administrative and
19 procedural authority regarding risk retention groups and
20 purchasing groups. The commissioner is authorized to use any
21 powers established under ~~{this-act}~~ THIS TITLE to enforce
22 the laws of this state so long as those powers are not
23 specifically preempted by the federal Liability Risk
24 Retention Act of 1986. The commissioner's powers include but
25 are not limited to the commissioner's administrative

1 authority to investigate, issue subpoenas, conduct
2 depositions and hearings, issue orders, and impose
3 penalties. With regard to any investigation, administrative
4 proceedings, or litigation, the commissioner may rely on the
5 procedural law and regulations of the state. The injunctive
6 authority of the commissioner in regard to risk retention
7 groups is restricted by the requirement that any injunction
8 be issued by a court of competent jurisdiction.

9 NEW SECTION. Section 11. Penalties. A risk retention
10 group that violates any provision of [sections 3 through 12]
11 is subject to fines and penalties applicable to licensed
12 insurers generally, including revocation of its license to
13 do business in this state.

14 NEW SECTION. Section 12. Duty of agents to obtain
15 license. A person acting or offering to act as an agent for
16 a risk retention group or purchasing group, that solicits
17 members, sells insurance coverage, purchases coverage for
18 its members located within the state, or otherwise does
19 business in this state shall, before commencing such
20 activity, obtain a license from the commissioner.

21 NEW SECTION. Section 13. Enforceability of orders
22 issued in United States district court. An order issued by
23 any district court of the United States enjoining a risk
24 retention group from soliciting or selling insurance or
25 operating in any state, territory, or possession of the

1 United States upon a finding that such a group is in a
2 hazardous financial condition, is enforceable in the courts
3 of this state.

4 NEW SECTION. Section 14. Rules and regulations. The
5 commissioner may make and amend any reasonable rules
6 relating to risk retention groups and purchasing groups
7 necessary or desirable to carry out the provisions of
8 [sections 3 through 12].

9 SECTION 15. SECTION 33-2-708, MCA, IS AMENDED TO READ:

10 "33-2-708. Fees and licenses. (1) The commissioner
11 shall collect in advance and the persons so served shall so
12 pay to the commissioner the following fees and licenses:

13 (a) certificates of authority:

14 (i) for filing applications for original certificates
15 of authority, articles of incorporation (except original
16 articles of incorporation of domestic insurers as provided
17 in subsection (b) below) and other charter documents,
18 bylaws, financial statement, examination report, power of
19 attorney to the commissioner, and all other documents and
20 filings required in connection with such application and for
21 issuance of an original certificate of authority, if issued:

- 22 (A) domestic insurers \$ 30.00
- 23 (B) foreign insurers 300.00
- 24 (ii) annual continuation of certificate of authority ..
- 25 300.00

1 (iii) reinstatement of certificate of authority
2 25.00

3 (b) articles of incorporation:

4 (i) filing original articles of incorporation of
5 domestic insurer, exclusive of fees required to be paid by
6 the corporation to the secretary of state 20.00

7 (ii) filing amendment of articles of incorporation,
8 domestic and foreign insurers, exclusive of fees required to
9 be paid to the secretary of state by a domestic corporation
10 10.00

11 (c) filing bylaws or amendment thereto where required
12 5.00

13 (d) filing annual statement of insurer, other than as
14 part of application for original certificate of authority ..
15 25.00

16 (e) resident agent's license:

17 (i) application for original license, including
18 issuance of license, if issued (life and/or disability)
19 10.00

20 (ii) application for original license, including
21 issuance of license, if issued (other than life and/or
22 disability) 10.00

23 (iii) appointment of agent, each insurer 10.00

24 (iv) annual renewal, each insurer 10.00

25 (v) temporary license 10.00

1 (vi) amendment of license (excluding additions thereto)
2 or reissuance of master license 10.00
3 (f) nonresident agent's license:
4 (i) application for original license, including
5 issuance of license, if issued (life and/or disability)
6 100.00
7 (ii) application for original license, including
8 issuance of license, if issued (other than life and/or
9 disability) 100.00
10 (iii) appointment of agent, each insurer 10.00
11 (iv) annual renewal, each insurer 10.00
12 (v) amendment of license (excluding additions thereto)
13 or reissuance of master license 10.00
14 (g) solicitor's license:
15 (i) application for original license, including
16 issuance of license, if issued 5.00
17 (ii) annual renewal of license 5.00
18 (h) examination for license as agent or solicitor,
19 each examination 10.00
20 (i) surplus line agent's license:
21 (i) application for original license and for issuance
22 of license, if issued 25.00
23 (ii) annual renewal of license 25.00
24 (j) adjuster's license:
25 (i) application for original license and for issuance

1 of license, if issued 10.00
2 (ii) annual renewal of license 10.00
3 (k) insurance vending machine license, each machine,
4 each year 10.00
5 (l) commissioner's certificate under seal (except when
6 on certificates of authority or licenses) 3.00
7 (m) copies of documents on file in the commissioner's
8 office, per page50
9 (n) policy forms:
10 (i) filing each policy form 25.00
11 (ii) filing each application, rider, endorsement,
12 amendment, insert page, schedule of rates, and clarification
13 of risks 10.00
14 (iii) maximum charge if policy and all forms submitted
15 at one time or resubmitted for approval within 180 days
16 50.00
17 (2) The commissioner shall promptly deposit with the
18 state treasurer to the credit of the general fund of this
19 state all fines and penalties and those amounts received
20 pursuant to 33-2-311, 33-2-705, and 33-2-706, and any fees
21 and examination and miscellaneous charges received pursuant
22 to [sections 1 through 14] that are collected by him
23 pursuant to Title 33 and the rules adopted thereunder.
24 (3) All fees are considered fully earned when
25 received. In the event of overpayment, only those amounts in

1 excess of \$10 will be refunded.

2 (4) All fees and examination and miscellaneous
3 charges, except fines or penalties or those amounts received
4 pursuant to 33-2-311, 33-2-705, or 33-2-706, collected by
5 the commissioner pursuant to Title 33 and the rules adopted
6 thereunder must be deposited in the insurance regulatory
7 trust account pursuant to 17-2-121 through 17-2-123."

8 NEW SECTION. Section 16. Codification instruction.
9 Sections 1 through 14 are intended to be codified as an
10 integral part of Title 33, and the provisions of Title 33
11 apply to sections 1 through 14.

12 NEW SECTION. SECTION 17. SEVERABILITY. IF A PART OF
13 THIS ACT IS INVALID, ALL VALID PARTS THAT ARE SEVERABLE FROM
14 THE INVALID PART REMAIN IN EFFECT. IF A PART OF THIS ACT IS
15 INVALID IN ONE OR MORE OF ITS APPLICATIONS, THE PART REMAINS
16 IN EFFECT IN ALL VALID APPLICATIONS THAT ARE SEVERABLE FROM
17 THE INVALID APPLICATIONS.

18 NEW SECTION. Section 18. Effective date. This act is
19 effective on passage and approval.

-End-