

Kansas Statutes - Insurance Laws
CHAPTER 40-- INSURANCE
Article 41 -- RISK RETENTION AND PURCHASING GROUPS

40-4101 Definitions

As used in this act:

- (a) "Commissioner" means the insurance commissioner of this state or the commissioner, director or superintendent of insurance in any other state.
- (b) "Completed operations liability" means liability arising out of the installation, maintenance or repair of any product at a site which is not owned or controlled by any person who: (1) Performs that work; or (2) hires an independent contractor to perform that work; but shall include liability for activities which are completed or abandoned before the date of the occurrence giving rise to the liability.
- (c) "Domicile," for purposes of determining the state in which a purchasing group is domiciled, means: (1) For a corporation, the state in which the purchasing group is incorporated; and (2) for an unincorporated entity, the state of its principal place of business.
- (d) "Hazardous financial condition" means that, based on its present or reasonably anticipated financial condition, a risk retention group, although not yet financially impaired or insolvent, is unlikely to be able to: (1) Meet obligations to policyholders with respect to known claims and reasonably anticipated claims; or (2) pay other obligations in the normal course of business.
- (e) "Insurance" means primary insurance, excess insurance, reinsurance, surplus lines insurance, and any other arrangement for shifting and distributing risk which is determined to be insurance under the laws of this state.
- (f) "Liability" means legal liability for damages (including costs of defense, legal costs and fees, and other claims expenses) because of injuries to other persons, damage to their property, or other damage or loss to such other persons resulting from or arising out of: (1) Any business (whether profit or nonprofit), trade, product, services (including professional services), premises or operations; or (2) any activity of any state or local government, or any agency or political subdivision thereof; and (3) does not include personal risk liability and an employer's liability with respect to its employees other than legal liability under the federal employers' liability act.
- (g) "Personal risk liability" means liability for damages because of injury to any person, damage to property, or other loss or damage, resulting from any personal, familial, or household responsibilities or activities, rather than from responsibilities or activities referred to in subsection (f).
- (h) "Plan of operation or a feasibility study" means an analysis which presents the expected activities and results of a risk retention group including, at a minimum:
 - (1) The coverages, deductibles, coverage limits, rates and rating classification systems for each line of insurance the group intends to offer;
 - (2) historical and expected loss experience of the proposed members and national experience of similar exposures;
 - (3) pro forma financial statements and projections;
 - (4) appropriate opinions by a qualified, independent casualty actuary, including a determination of minimum premium or participation levels required to commence operations and to prevent a hazardous financial condition;
 - (5) identification of management, underwriting procedures, managerial oversight methods, investment policies; and
 - (6) such other matters as may be prescribed by the commissioner for liability insurance companies authorized by the insurance laws of the state.
- (i) "Product liability" means liability for damages because of any personal injury, death, emotional harm, consequential economic damage, or property damage (including damages resulting from the loss of use of property) arising out of the manufacture, design, importation, distribution, packaging, labeling, lease or sale of a product, but does not include the liability of any person for those damages if the product involved was in the possession of such a person when the incident giving rise to the claim occurred.
- (j) "Purchasing group" means any group which:
 - (1) Has as one of its purposes the purchase of liability insurance on a group basis;
 - (2) purchases such insurance only for its group members and only to cover their similar or related liability exposure, as described in subparagraph (3);

- (3) is composed of members whose businesses or activities are similar or related with respect to the liability to which members are exposed by virtue of any related, similar, or common business, trade, product, services, premises, or operations; and
- (4) is domiciled in any state.
- (k) "Risk retention group" means any corporation or other limited liability association formed under the laws of any state, Bermuda, or the Cayman Islands:
 - (1) Whose primary activity consists of assuming and spreading all, or any portion, of the liability exposure of its group's members;
 - (2) which is organized for the primary purpose of conducting the activity described in subparagraph (1);
 - (3) which is chartered and licensed as a liability insurance company and authorized to engage in the business of insurance under the laws of any state; or before January 1, 1985 was chartered or licensed and authorized to engage in the business of insurance under the laws of Bermuda or the Cayman Islands and, before such date, had certified to the insurance commissioner of at least one state that it satisfied the capitalization requirements of such state, except that any such group shall be considered to be a risk retention group only if it has been engaged in business continuously since such date and only for the operations liability (as such terms were defined in the product liability risk retention act of 1981 before the date of the enactment of the risk retention act of 1986);
 - (4) which does not exclude any person from membership in the group solely to provide for members of such a group a competitive advantage over such a person;
 - (5) which has as its members only persons who have an ownership interest in the group and which has as its owners only persons who are members who are provided insurance by the risk retention group; or has as its sole member and sole owner in organization which is owned by persons who are provided insurance by the risk retention group;
 - (6) whose members are engaged in business or activities similar or related with respect to the liability of which such members are exposed by virtue of any related, similar, or common business trade, product, services, premises, or operations;
 - (7) whose activities do not include the provisions of insurance other than liability insurance for assuming and spreading all or any portion of the liability of its group members; and reinsurance with respect to the liability of any other risk retention group (or any members of such other group) which is engaged in business or activities so that such group or member meets the requirement described in subparagraph (6) from membership in the risk retention group which provides such reinsurance; and
 - (8) the name of which includes the phrase "risk retention group."
- (l) "State" means any state of the United States and the District of Columbia.

40-4115 Purchasing groups; exemptions

Any purchasing group meeting the criteria established under the provisions of the federal liability risk retention act of 1986 shall be exempt from any law of this state relating to the creation of groups for the purchase of insurance, prohibition of group purchasing or any law that would discriminate against a purchasing group or its members. In addition, an insurer shall be exempt from any law of this state which prohibits providing, or offering to provide, to a purchasing group or its members advantages based on their loss and expense experience not afforded to other persons with respect to rates, policy forms, coverage or other matters. A purchasing group shall be subject to all other applicable laws of this state.

40-4116 Filing and registration requirements

- (a) A purchasing group which intends to do business in this state shall furnish notice to the commissioner which shall:
 - (1) Identify the state in which the group is domiciled;
 - (2) specify the lines and classifications of liability insurance which the purchasing group intends to purchase;
 - (3) identify the insurance company from which the group intends to purchase its insurance and the domicile of such company;
 - (4) identify the principal place of business of the group; and
 - (5) provide such other information as may be required by the commissioner to verify that the purchasing group is qualified under subsection (j) of K.S.A. 40-4101 and amendments thereto.

The notice submitted to the commissioner shall be accompanied by a notification fee of \$250.

(b) The purchasing group shall file with the insurance department its written consent, irrevocable, that any action or garnishment proceeding may be commenced against such group in the proper court of any county in this state in which the cause of action shall arise or in which the plaintiff may reside by the service of process on the commissioner of insurance of this state and stipulating and agreeing that such service shall be taken and held in all courts to be as valid and binding as if due service had been made upon the president or chief officer of such corporation. Such consent shall be executed by the president of the company and shall be accompanied by a certified copy of the order or resolution of the board of directors, trustees or managers authorizing the president to execute the same. The summons, accompanied by a fee of \$25 shall be directed to the commissioner of insurance and shall require the defendant to answer not less than 40 days from its date. Such summons, and a certified copy of the petition shall be forthwith forwarded by the clerk of the court to the commissioner of insurance, who shall immediately forward a copy of the summons and the certified copy of the petition, to the president of the group sued and thereupon the commissioner of insurance shall make return of the summons to the court from which it issued, showing the date of the receipt by the commissioner, the date of forwarding of such copies and the name and address of the person to whom the commissioner forwarded the copy. Such return shall be made under the commissioner's hand and seal of office, and shall have the same force and effect as a due and sufficient return made by the sheriff on process directed to the sheriff. The foregoing shall not apply in the case of a purchasing group which:

- (1)(A) Was domiciled before April 2, 1986; and
(B) is domiciled on and after October 27, 1986 in any state of the United States;
- (2)(A) before October 27, 1986 purchased insurance from an insurance carrier licensed in any state; and
(B) since October 27, 1986 purchased its insurance from an insurance carrier licensed in any state;
- (3) was a purchasing group under the requirements of the product liability retention act of 1981 before October 27, 1986; and
- (4) does not purchase insurance that was not authorized for purposes of an exemption under that act, as in effect before October 27, 1986.

40-4117 Insurance purchase restrictions

A purchasing group may not purchase insurance from a risk retention group that is not chartered in a state or from an insurer not admitted in the state in which the purchasing group is located, unless the purchase is effected through a licensed agent or broker acting pursuant to the surplus lines laws and regulations of such state.

40-4118 Enforcement authority

The commissioner is authorized to make use of any of the powers established under the insurance code of this state to enforce the laws of this state so long as those powers are not specifically preempted by the product liability risk retention act of 1981, as amended by the risk retention amendments of 1986. Such authorization includes, but is not limited to, the commissioner's administrative authority to investigate, issue subpoenas, conduct depositions and hearings, issue orders and impose penalties. With regard to any investigation, administrative proceeding, or litigation, the commissioner can rely on the procedural law and regulations of the state. The injunctive authority of the commissioner in regard to risk retention groups is restricted by the requirement that any injunction be issued by a court of competent jurisdiction.

40-4119 License requirements

Any person acting, or offering to act, as an agent or broker for a risk retention group, which solicits members, sells insurance coverage, purchases coverage for its members located within the state or otherwise does business in this state shall, before commencing any such activity, obtain a license from the commissioner.

40-4120 Enforcement of court orders

An order issued by any district court of the United States enjoining a risk retention group from soliciting or selling insurance, or operating, in any state (or in all states or in any territory or possession of the United States) upon a finding that such a group is in a hazardous financial condition, shall be enforceable in the courts of the state.

CHECK LIST FOR PURCHASING GROUPS REGISTERING IN THE STATE OF KANSAS

- Properly completed NAIC or State of Kansas Purchasing Group Notice & Registration Form
- Properly completed Appointment Of Attorney To Accept Service and Designation
- \$250 Non Refundable filing fee

Other Information Department Requires:

- Confirmation letter from the group's state of domicile stating that the group is domiciled and in good standing. (Copies of Articles of Incorporation are not acceptable.) Not applicable if group domiciled in Kansas. See example.
- Documentation that the appropriate rate and form filings have been or are being filed by the admitted company with the insurance commissioner of the state of Kansas.
- Designated Agent (An agent must be designated.)
 - Admitted Company - - - -Resident or Non Resident agent appointed by the company.
 - Excess Lines Company - Resident or Nonresident agent must hold an excess lines license.
- Acknowledgment letter with original signature from designated agent accepting responsibility as agent for the RPG. See example.
- E-Mail address if available

Date

Insurance Department
Name of Regulator
Street Address
City, State Zip

Re: XYZ Purchasing Group

Dear Sir or Madame:

XYZ Purchasing Group, a State Name domiciled purchasing group, is seeking to become registered in the state of Kansas as a foreign purchasing group. As part of the registration process, the Kansas Insurance Department requires an original letter of certification from your Department verifying that XYZ Purchasing Group is, in fact domiciled and in good standing in your state.

On behalf of XYZ Purchasing Group, we respectfully request that you forward such a letter directly to the Kansas Insurance Department as follows:

David J. Isaacs, Sr.
Property & Casualty Policy Examiner
Kansas Insurance Department
420 SW 9th St
Topeka KS 66612-1678

We appreciate your attention to this matter. Please do not hesitate to contact me if you should have any questions.

Very truly yours,

RPG Responsible Person

Date

Kansas Insurance Department
Attn: David J. Isaacs
420 SW 9th
Topeka KS 66612-1678

Re: XYZ Purchasing Group
Agent Name:
Agent License Number:

Dear Mr. Isaacs:

Please consider this confirmation of my designation as the responsible agent for the above captioned risk purchasing group.

I am the holder of the statutory required licenses for the State of Kansas.

Please contact me if you should need further information.

Sincerely,

Designated Agent

STATE OF KANSAS
INSURANCE DEPARTMENT
PURCHASING GROUP NOTICE AND REGISTRATION
(All Information Should Be Typed)

1. List the exact name of the Purchasing Group:

2. List any other name(s) by which the Purchasing Group is known or may be doing business in this state or any other state:

3. a) Indicate the form of the organization (i.e., corporation, partnership, association) and the state in which organized:

b) Purpose(s) of organization:

4. a) The Purchasing Group is domiciled in the state of: _____

b) Address: _____

5. List the physical address of the administrative offices of the Purchasing Group, if different from response to Item #4b above:

6. The Purchasing Group intends to purchase the following lines and classifications of liability insurance: _____

7. The Purchasing Group intends to purchase the liability insurance described in Item #6 above from the following company or companies: Give full name of company, state of domicile, and Federal Employer Identification Number (FEIN).

<u>Name of Company</u>	<u>State of Domicile</u>	<u>FEIN</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

8. List the name, address and social security number (SS#) of each officer and director of the Purchasing Group: (Attach additional pages is necessary.)

<u>Name</u>	<u>Address</u>	<u>SS#</u>	<u>Position with Purchasing Group</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

9. List the name, SS#, address and telephone number of the person within the Purchasing Group who is most knowledgeable about the Purchasing Group's insurance program, including membership criteria and coverages:

<u>Name</u>	<u>SS#</u>	<u>Address</u>	<u>Telephone #</u>
_____	_____	_____	_____
_____	_____	_____	_____

10. List the name, address and telephone number of the company that manages or administers the insurance program for the Purchasing Group, and the name and telephone number of the person responsible for the Group's insurance program: (If none, answer none.)

<u>Name</u>	<u>Address</u>	<u>Telephone#</u>
_____	_____	_____
_____	_____	_____

11. List the name(s), SS#(s) and address(es) of the licensed agent(s), broker(s) or excess (surplus) line broker(s) responsible for the purchase of liability insurance for the Purchasing Group members: (Attach additional pages, if necessary.)

<u>Name</u>	<u>SS#</u>	<u>Address</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

12. Has any person transacting business on behalf of this Purchasing Group ever:

- a) been arrested, indicted and convicted of a felony or is a felony charge currently pending against any such person? _____
- b) had denied any application for a professional, vocational or business license? _____
- c) had suspended or revoked any such license? _____
- d) had withdrawn or surrendered any such application or license to avoid potential disciplinary action against licensee? _____

If the answer to any part of this question is yes, attach a supplementary statement explaining in full each such occurrence.

13. The Purchasing Group is composed of members whose businesses or activities are similar or related with respect to the liability to which members are exposed by virtue of any related, similar or common business, trade, product, services, premises or operations. Give a general description of business or activities engaged in by Purchasing Group members:

14. The Purchasing Group purchases the liability insurance listed in Item #8 above only for its group members and only to cover their similar or related liability exposure, as described in Item #14 above.

15. The Purchasing Group has as one of its purposes the purchase of liability insurance on a group basis.

16. The Purchasing Group has designated the Insurance Commissioner of this State to be its agent solely for the purpose for receiving service of legal documents or process by executing Part B of this form, attached hereto.

- 17. The Purchasing Group has submitted a non-refundable registration fee of \$250 payable to the Insurance Commissioner of this State.
- 18. The Purchasing Group will not purchase any insurance policy in this state which provides coverage prohibited generally by statute of this state or declared unlawful by the highest court of this state whose law applies to such policy.
- 19. The Purchasing Group will comply with all other applicable state laws.
- 20. **The Purchasing Group will notify the Insurance Commissioner of any subsequent changes in any of the items included in this form.**

The undersigned hereby swear and affirm that the foregoing statements and information

regarding their principal, the _____
 (Name of Purchasing Group)

are true and correct.

 President of the Purchasing Group

 Secretary of the Purchasing Group

State of _____ }
 County of _____ } ss:

Sworn before me this _____ day of _____, 20 _____.

_____, Notary Public.

My Commission Expires: _____

APPOINTMENT OF ATTORNEY TO ACCEPT SERVICE AND DESIGNATION

The _____ (“the Group”),
a purchasing group organized under the laws of the State of _____,
having notified the Insurance Commissioner of the state of Kansas of its intention to do business in
this State as a purchasing group pursuant to the Federal Liability Risk Retention Act of 1986,
hereby appoints the Insurance Commissioner of the State of Kansas, any successor in office, and
any authorized deputy for its true and lawful attorney, in and for the State of Kansas, upon whom all
legal documents or process in any proceeding against it may be served. Such service of process
shall be of the same legal force and validity as if served personally upon the Group.

The Group designates:

(Name)

(Address)

(City, Town or Village)

(State and Zip Code)

as its officer, agent or other person to whom shall be forwarded all legal documents or process
served upon the Insurance Commissioner of the State of Kansas, any successors in office, or any
authorized deputy, for the Group. This designation shall continue in full force and effect until
superseded by a new written designation filed with the Insurance Commissioner.

This appointment and designation is made pursuant to a resolution by the Group's governing body authorizing it, and a certified copy of the resolution is attached hereto. This appointment shall be binding upon any person or corporation which as successor acquires the Group's assets or assumes its liabilities, by merger or consolidation or otherwise.

This appointment may be withdrawn only upon a written notice of termination and, in any event, shall not be terminated by the Group or its successor so long as any contracts or liabilities or duties arising out of contracts entered into by the Group while it was doing business in this State are in effect.

IN WITNESS OF THIS APPOINTMENT AND DESIGNATION, the Group, in accordance with the resolution of its Board of Directors duly passes on _____, 20 ____, has affixed its corporate seal, and caused the same to be subscribed and attested in its name by this President and Secretary, at the City of _____ in the State of _____ on _____, 20 ____.

(Name of Purchasing Group)

By: _____ President

_____ Secretary

State of _____ } ss:

County of _____

Sworn before me this _____

day of _____, 20 ____.

_____, Notary Public

My Commission Expires: _____