

§ 58-22-15. Risk retention groups chartered in this State.

(a) General Requirements. – A risk retention group shall, pursuant to the provisions of Part 9 of Article 10 of this Chapter, be chartered and licensed to write only liability insurance pursuant to this Article and, except as provided elsewhere in this Article, must comply with all of the laws and rules applicable to such insurers chartered and licensed in this State and with G.S. 58-22-20 to the extent such requirements are not a limitation on laws, administrative rules, or requirements of this State.

(b) Plan of Operation. – Before it may offer insurance in any state, each risk retention group shall also submit for approval to the Commissioner of this State a plan of operation or feasibility study. The Commissioner may limit the net amount of risk retained by a risk retention group for any individual risk. The risk retention group shall submit an appropriate revision in the event of any subsequent material change in any item of the plan of operation or feasibility study, within 10 days after any such change. The group shall not offer any additional kinds of liability insurance, in this State or in any other state, until a revision of such plan or study is approved by the Commissioner.

(c) Required Information. – At the time of filing its application for a charter, the risk retention group shall provide to the Commissioner in summary form the following information: the identity of the initial members of the group, the identity of those individuals who organized the group or who will provide administrative services or otherwise influence or control the activities of the group, the amount and nature of initial capitalization, the coverages to be afforded, and the states in which the group intends to operate. Upon receipt of this information, the Commissioner shall forward such information to the NAIC. Providing notification to the NAIC is in addition to and shall not be sufficient to satisfy the requirements of G.S. 58-22-20 or any other sections of this Article.

(d) Governance Standards. – Risk retention groups shall comply with the following governance standards:

- (1) Board of directors. – The following standards apply to the board of directors of the risk retention group:
 - a. Definitions. – The following definitions apply in this subdivision:
 1. Board of directors or board. – The governing body of the risk retention group elected by the shareholders or members to establish policy, elect or appoint officers and committees, and make other governing decisions.
 2. Director. – A natural person designated in the articles of the risk retention group, or designated, elected, or appointed by any other manner, name, or title to act as a director.
 - b. Independent directors. – The board of directors of the risk retention group shall have a majority of independent directors. If the risk retention group is a reciprocal, then the attorney-in-fact would be required to adhere to the same standards regarding independence of operation and governance as imposed on the risk retention group's board of directors or subscribers advisory committee under these standards; and, to the extent permissible under State law, service providers of a reciprocal risk retention group should contract with the risk retention group and not the attorney-in-fact.
 - c. Determination of independence. – No director qualifies as independent unless the board of directors affirmatively determines that the director has no material relationship, as partially specified in sub-subdivision d. of this subdivision, with the risk retention group. Each risk retention group shall disclose these determinations to the

Commissioner at least annually. For the purpose of this subdivision, any person that is a direct or indirect owner of or subscriber in the risk retention group (or is an officer, director, or employee of such an owner and insured, unless some other position of such officer, director, or employee constitutes a material relationship), as contemplated by Section 3901(a)(4)(E)(ii) of the federal Liability Risk Retention Act, is considered to be "independent."

d. Material relationship. – "Material relationship" of a person with the risk retention group includes, but is not limited to, the following:

1. The receipt in any one 12-month period of compensation or payment of any other item of value by such person, a member of such person's immediate family, or any business with which such person is affiliated from the risk retention group or a consultant or service provider to the risk retention group is greater than or equal to five percent (5%) of the risk retention group's gross written premium for such 12-month period or two percent (2%) of its surplus, whichever is greater, as measured at the end of any fiscal quarter falling in such a 12-month period. Such person or immediate family member of such person is not independent until one year after his/her compensation from the risk retention group falls below the threshold.
2. A relationship with an auditor as follows: a director or an immediate family member of a director who is affiliated with or employed in a professional capacity by a present or former internal or external auditor of the risk retention group is not independent until one year after the end of the affiliation, employment, or auditing relationship.
3. A relationship with a related entity as follows: a director or immediate family member of a director who is employed as an executive officer of another company where any of the risk retention group's present executives serve on that other company's board of directors is not independent until one year after the end of such service or the employment relationship.

(2) Service provider contracts. –

- a. The term of any material service provider contract with the risk retention group shall not exceed five years. Any such contract, or its renewal, shall require the approval of the majority of the risk retention group's independent directors. The risk retention group's board of directors shall have the right to terminate any service provider, audit, or actuarial contracts at any time for cause after providing adequate notice as defined in the contract. The service provider contract is deemed material if the amount to be paid for such contract is more than or equal to the greater of five percent (5%) of the risk retention group's annual gross written premium or two percent (2%) of its surplus.
- b. For purposes of this standard, "service providers" shall include captive managers, auditors, accountants, actuaries, investment advisors, lawyers, managing general underwriters, or other party

responsible for underwriting, determination of rates, collection of premium, adjusting and settling claims, or the preparation of financial statements. Any reference to "lawyers" in the prior sentence of this sub-subdivision does not include defense counsel retained by the risk retention group to defend claims, unless the amount of fees paid to such lawyers are "material" under the standard set forth in this subdivision for a service provider contract.

- c. No service provider contract shall be entered into with a person meeting the definition of "material relationship" contained in sub-subdivision (1)d. of this subsection unless the risk retention group has notified the Commissioner in writing of its intention to enter into such transaction at least 30 days prior thereto and the Commissioner has not disapproved it within such period.
- (3) Written policy. – The risk retention group's board of directors shall adopt a written policy in the plan of operation as approved by the board that requires the board to do all of the following:
- a. Assure that all owner/insureds of the risk retention group receive evidence of ownership interest.
 - b. Develop a set of governance standards applicable to the risk retention group.
 - c. Oversee the evaluation of the risk retention group's management including, but not limited to, the performance of the captive manager, managing general underwriter, or other party or parties responsible for underwriting, determination of rates, collection of premium, adjusting or settling claims, or the preparation of financial statements.
 - d. Review and approve the amount to be paid for all material service providers.
 - e. Review and approve, at least annually, all of the following:
 - 1. Risk retention group's goals and objectives relevant to the compensation of officers and service providers.
 - 2. The officers' and service providers' performance in light of those goals and objectives.
 - 3. The continued engagement of the officers and material service providers.
- (4) Governance standards. – The board of directors shall adopt and disclose governance standards. For purposes of this subdivision, "disclose" means making such information available through electronic or other means, such as posting on the risk retention group's Web site, and providing such information to members or insureds upon request. The standards to be disclosed shall include all of the following:
- a. A process by which the directors are elected by the owner/insureds.
 - b. Director qualification standards.
 - c. Director responsibilities.
 - d. Director access to management and, as necessary and appropriate, independent advisors.
 - e. Director compensation.
 - f. Director orientation and continuing education.
 - g. The policies and procedures that are followed for management succession.

- h. The policies and procedures that are followed for annual performance evaluation of the board.
- (5) Business conduct and ethics. – The board of directors shall adopt and disclose a code of business conduct and ethics for directors, officers, and employees and promptly disclose to the board of directors any waivers of the code for directors or executive officers. The code of business conduct and ethics shall include the following topics:
- a. Conflicts of interest.
 - b. Matters covered under the corporate opportunities doctrine as that doctrine has been interpreted by the courts of this State.
 - c. Confidentiality.
 - d. Fair dealing.
 - e. Protection and proper use of risk retention group assets.
 - f. Duty of compliance with all applicable laws, rules, and regulations.
 - g. A requirement to report any illegal or unethical behavior which affects the operation of the risk retention group.
- (6) Reporting noncompliance. – The captive manager or the president or chief executive officer of the risk retention group shall promptly notify the Commissioner in writing if either becomes aware of any material noncompliance with the governance standards set forth in this subsection. (1985 (Reg. Sess., 1986), c. 1013, s. 8; 1987, c. 310, s. 1; c. 727, s. 13; 1993, c. 452, s. 36; 1995 (Reg. Sess., 1996), c. 747, s. 8; 2013-116, s. 2; 2014-65, s. 22; 2015-146, s. 3.)