

OFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF NEW  
YORK  
TITLE 11. INSURANCE DEPARTMENT  
CHAPTER XII. GROUP PROPERTY/CASUALTY INSURANCE  
PART 301. PURCHASING GROUPS

Text is current through August 31, 2001, and annotations are current through February 2001.

**Section 301.0 Preamble.**

(a) On October 27, 1986, Congress enacted the Federal Liability Risk Retention Act of 1986 (15 USC 3901 et seq.) (LRRRA), amending the Product Liability Risk Retention Act of 1981. Certain State laws affecting the purchase of commercial liability insurance on a group basis by purchasing groups are specifically preempted by the LRRRA, by which Congress intends to facilitate the formation and operation of purchasing groups and the ability of insurers to provide group coverage for such purchasing groups.

(b) In response to the LRRRA, a new article 59 of the Insurance Law, entitled Risk Retention Groups and Purchasing Groups, was enacted into law on June 13, 1988. Article 59 will take effect on December 10, 1988, conforming New York law to the LRRRA to the extent necessary as well as implementing a State regulatory framework for these new entities.

(c) Prior to the enactment of article 59, it was necessary to provide guidance to the insurance industry, including the risk retention sector, and the general public as to the continuing applicability of the New York Insurance Law and related laws in conjunction with and not preempted by the LRRRA. Accordingly, this Part was promulgated initially on an emergency basis on February 16, 1988, effective February 22, 1988, and twice repromulgated, again on an emergency basis, on April 21, 1988, effective April 22, 1988, and on June 20, 1988, effective June 21, 1988, without any lapse.

(d) The superintendent held a public hearing on March 9, 1988 in connection with proposed and emergency Part 301. Some of the public comments received, both at and following the hearing, asserted that this Part was contrary to "the spirit and intent" of the LRRRA. These comments assumed that the LRRRA had preempted state regulatory control to an extent beyond that recognized by the superintendent in enacting this Part.

(e) The superintendent's authority and duty is to enforce and interpret the Insurance Law and other related New York laws, consistent with applicable Federal law. Recent Federal court decisions confirm the proposition that the superintendent is acting in a manner consistent with both the letter and the spirit of the LRRRA.

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(f) Given the LRRRA's explicit preemption of only certain State laws regarding purchasing groups and their insurers, those State laws not so preempted continue to apply. Thus, statutory and regulatory requirements of the New York Insurance Law and regulations not preempted by the LRRRA remain applicable to purchasing groups and their insurers doing business in this State.

(g) This Part:

(1) clarifies how existing requirements of the Insurance Law not preempted by the LRRRA apply to purchasing groups and insurers of such groups, to reduce confusion as to how such laws operate in regard to insurance sold on a purchasing group basis;

(2) distinguishes between transactions involving the group and transactions involving the group members;

(3) applies only to insurance transactions with a New York nexus, in the same manner as in nonpurchasing group situations;

(4) specifies rules for the transitional period before article 59 takes effect on December 10, 1988, and establishes rules which apply on and after such effective date (except as otherwise provided, all sections of this Part are applicable on and after the effective date of this Part [August 22, 1988]);

(5) specifies rules governing the application of New York law to rate and form requirements for authorized insurers and the placement of business with unauthorized insurers, including excess line laws, as such laws and requirements relate to the placement and writing of insurance coverage for purchasing groups and their members in this State; and

(6) establishes registration procedures for purchasing groups doing business in this State with reasonable fees to defray the department's costs relative to such registration.

### **Section 301.1 Definitions.**

In this Part, the following definitions shall apply:

(a) Doing an insurance business has the meaning ascribed to it by section 1101 of the Insurance Law.

(b) Doing business in this State includes, with respect to a purchasing group, where there is:

(1) a member which has a risk resident or located in this State;

(2) any solicitation, negotiation, issuance or delivery in this State of a policy by, to or on behalf of such group or any of its members; or

(3) an office of such group in this State.

(c) 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

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 (45 USC 51 et seq.).

(d) Personal risk liability means liability for damages because of injury to any person, damage to property, or other loss or damage resulting from any personal, familial or household responsibilities or activities, rather than from responsibilities or activities described in paragraphs (c)(1)-(2) of this section.

(e) Policy means any policy, contract, certificate or evidence of insurance, or rider or endorsement thereto.

(f) Purchasing group means any group, formed pursuant to the LRRRA, 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 paragraph (3) of this subdivision;

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(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.

(g) Risk retention group means any corporation or other limited liability association, formed pursuant to the LRRRA:

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

(2) which is organized for the primary purpose of conducting the activity described under paragraph (1) of this subdivision;

(3) which is:

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

(ii) 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 purpose of continuing to provide insurance to cover product liability or completed operations liability;

(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:

(i) has as its owners only persons who comprise the membership of the risk retention group and who are provided insurance by such group; or

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

(6) whose members are engaged in businesses 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 provision of insurance other than:

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

(ii) reinsurance with respect to the liability of any other risk retention group (or any member of such other group) which is engaged in businesses or activities which meet the requirement described in paragraph (6) of this subdivision for membership in the risk retention group which provides such reinsurance; and

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(8) the name of which includes the phrase "Risk Retention Group."

(h) State means any state of the United States or the District of Columbia.

(i) Unauthorized insurer means, for purposes of this Part, any insurer which is not:

(1) an authorized insurer, as that term is defined in section 107 of the Insurance Law; or

(2) a risk retention group chartered and licensed in a state.

(j) All other terms used herein shall have the same meanings ascribed to them in section 107 of the Insurance Law. On and after December 10, 1988, all other terms used herein shall have the same meanings ascribed to them in section 107 of the Insurance Law and section 5902 of the Insurance Law. Where section 107 of the Insurance Law and section 5902 of the Insurance Law provide for different meanings, section 5902 of the Insurance Law shall govern.

### **Section 301.2 General provisions.**

The LRRA exempts purchasing groups and their insurers from certain state laws which are specified therein. Section 5907 of the Insurance Law codifies those exemptions into New York law. All other provisions of New York law, and the rules and regulations promulgated thereunder, are applicable to a purchasing group doing business in this State, its members and its representatives, insurers writing policies for such purchasing groups, and any other person, firm, association or corporation acting in connection with the placement of liability insurance for a purchasing group or a member of such purchasing group.

### **Section 301.3 Policy form and rate filing and approval requirements for authorized insurers.**

An authorized insurer providing coverage for a purchasing group or a member of such purchasing group, with respect to risks or operations in this State, shall comply with article 23 and all other provisions of the Insurance Law, rules and regulations governing policy form and rate standards, including filing and approval requirements.

### **Section 301.4 Unauthorized insurers: doing an insurance business.**

(a) In connection with a purchasing group or a member of such group, an unauthorized insurer shall not do any act that would constitute the doing of an insurance business in this State.

(b) Except to the extent specifically permitted under section 1101 of the Insurance Law, the delivery in this State by mail or otherwise of any liability insurance policy by an unauthorized insurer to a purchasing group or a member of such group is prohibited.

(c) Except to the extent specifically permitted under section 1101 of the Insurance Law, an unauthorized insurer is doing an insurance business in this State if, acting on behalf of such unauthorized insurer:

(1) any person, firm, association or corporation in this State delivers a liability insurance policy to a purchasing group or a member of such group; or

(2) any purchasing group, its representative or any other person, firm, association or corporation in this State delivers a liability insurance policy to a member of such group.

**Section 301.5 Location of a purchasing group.**

(a) For the purposes of section 5909(a) of the Insurance Law, to determine when liability insurance from an unauthorized insurer for a purchasing group or its member must be obtained through an excess line broker, a purchasing group is located in this State:

(1) with respect to the purchasing group, when there is any solicitation, negotiation, issuance or delivery in this State of such group policy by, to, or on behalf of such group; or

(2) with respect to a member, when there is any solicitation, negotiation, issuance or delivery in this State of such member's policy.

(b) Notwithstanding the above, a purchasing group is not located in this State if, under the provisions of section 2117 of the Insurance Law, the use of an excess line broker is not required.

**Section 301.6 Excess line broker requirement.**

(a) No person, firm, association or corporation, except as specifically permitted by section 2117 of the Insurance Law, shall procure insurance in this State from an unauthorized insurer for a purchasing group or a member of such group, unless such person, firm, association or corporation is:

(1) licensed as an excess line broker pursuant to section 2105 of the New York Insurance Law; and

(2) acting in accordance with section 2118 of the Insurance Law and Part 27 (Regulation No. 41) of this Title.

(b) An excess line broker procuring a liability insurance policy from an unauthorized insurer for a purchasing group or a member of such group shall in such transaction comply with sections 2117, 2118 and 2122 of the Insurance Law and Part 27 (Regulation No. 41) of this Title, in the following manner:

(1) Affidavit by broker or excess line broker. An affidavit by a broker or an excess line broker, evidencing the requisite number of declinations, may be executed and filed by the licensee on behalf of more than one member of a purchasing group, where liability insurance for such members was procured during the 30 days prior to the filing of the affidavit, provided that such affidavit specifies all applicable information required in the affidavit for each such included member.

(2) Affidavit by insured. The required affidavit by the insured shall be executed by and filed for each insured member of the purchasing group.

(c) Pursuant to section 2118 of the Insurance Law, in connection with a purchasing group or a member of such purchasing group, an excess line broker shall not solicit for, or on behalf of, an unauthorized insurer.

(d) Notwithstanding section 2105 of the Insurance Law, any person, firm, association or corporation, acting in this State solely on behalf of a purchasing group or any of its members in obtaining liability insurance, shall not be required to be domiciled or to maintain an office in this State in order to obtain an excess line broker's license for such purpose.

**Section 301.7 Aiding unauthorized insurers.**

Except as specifically permitted for an insurance broker or an excess line broker under section 2117 or 2118 of the Insurance Law, in connection with the procurement of liability insurance for a purchasing group or a member of such purchasing group, no purchasing group, its representative or any other person, firm, association or corporation shall in this State:

(a) solicit, negotiate or effectuate any insurance contract, or place risks with an unauthorized insurer;

(b) act as agent for an unauthorized insurer, or aid an unauthorized insurer, in any manner in effecting such a contract;

**Section 301.8 Notice and registration requirements--prior to December 10, 1988.**

(a) Notice. The LRRRA requires that a purchasing group which intends to do business in any state furnish notice of such intention to the insurance commissioner of such state.

(1) Such notice, to be submitted to the superintendent, as required by the LRRRA, shall include the following information:

(i) the state in which the purchasing group is domiciled;

(ii) the lines and classifications of liability insurance which the purchasing group intends to purchase;

(iii) the insurer or risk retention group from which the purchasing group intends to purchase insurance and the domicile of such insurer or risk retention group; and

(iv) the principal place of business of the purchasing group.

(2) A purchasing group shall, as required by the LRRRA, notify the superintendent of any subsequent changes in any of the items provided in the notice described by subdivision (a) of this section within 30 days of the occurrence of the change.

(b) Registration. The LRRRA requires that a purchasing group register with and designate the commissioner of each state in which it does business as its agent solely for the purpose of receiving service of legal documents or process. In order to register, a purchasing group shall submit to the superintendent a power of attorney and a certificate of designation. The power of attorney shall:

(1) be executed and certified;

(2) appoint the superintendent and any successors in office, and any authorized deputy, as the purchasing group's true and lawful attorney in and for the State of New York, for the purpose of receiving all legal documents or process in any proceeding against the purchasing group that may be served;

(3) be of indefinite duration;

(4) bind any person or corporation which, as successor, acquires the purchasing group's assets and assumes its liabilities by merger, consolidation or otherwise;

(5) not be terminated by the purchasing group or such successor so long as any contracts, or liabilities or duties arising out of such contracts, entered into by the purchasing group while doing business in this State, are in effect; and

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(6) be accompanied by a certified copy of a resolution by the purchasing group's governing body or empowered person authorizing the requisite power of attorney.

(c) The written certificate of designation shall be executed and certified and shall state the name and address of the authorized officer, agent or other person to whom legal documents or process shall be forwarded by the superintendent or deputy. In the event of any change in such designation, a new certificate shall be filed with the superintendent within 10 days of such change.

(d) Service of legal documents or process upon a purchasing group may be made at the offices of the department during normal and ordinary business hours, pursuant to the power of attorney executed by the purchasing group, by serving the superintendent, any deputy superintendent, or any salaried employee of the Insurance Department whom the superintendent designates for such purposes, with two copies thereof and a fee of \$20.

(e) Whenever service of legal documents or process is made in accordance with this section:

(1) a copy of such documents or process shall be forwarded by the superintendent by mail, directed to the person last designated by such purchasing group, as shown by department records;

(2) the superintendent will keep a record noting the date of service of each legal document or process served under this section; and

(3) upon request made within 10 years of such service, the superintendent will issue a certificate under his seal certifying receipt of the legal documents or process, date of service, and receipt of the fee.

(f) A registration fee of \$100 shall accompany the registration provided for in subdivision (b) of this section.

(g) The registration and designation provisions of subdivisions (b) and (c) of this section do not apply to any purchasing group exempted from registration by the LRRRA.

### **Section 301.9 Notice and registration requirements on and after December 10, 1988.**

(a) Section 5908 of the Insurance Law requires that a purchasing group which intends to do business in this State shall, prior to doing such business, furnish notice of such intention to the superintendent, and requires a purchasing group which does business in this State to submit to the superintendent a statement of registration. For the purpose of section 5908, doing business in this State shall have the meaning contained in section 301.1(b) of this Part.

(b) A purchasing group shall file the statement of registration, consisting of a power of attorney and certificate of designation, which shall be submitted in the form prescribed by the superintendent. The power of attorney shall:

(1) be executed and certified;

(2) appoint the superintendent and any successors in office, and any authorized deputy, as the purchasing group's true and lawful attorney in and for the State of New York, for the purpose of receiving all legal documents or process in any proceeding against the purchasing group that may be served;

(3) be of indefinite duration;

(4) bind any person or corporation which, as successor, acquires the purchasing group's assets and assumes its liabilities by merger, or consolidation or otherwise;

(5) not be terminated by the purchasing group or such successor so long as any contracts, or liabilities or duties arising out of such contracts, entered into by the purchasing group while doing business in New York, are in effect; and

(6) be accompanied by a certified copy of a resolution by the purchasing group's governing body or empowered person authorizing the requisite power of attorney.

(c) The written certificate of designation shall be executed and certified and shall state the name and address of the authorized officer, agent or other person to whom legal documents or process shall be forwarded by the superintendent or deputy. In the event of any change in such designation, a new certificate shall be filed with the superintendent within 10 days of such change.

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(d) A registration fee of \$100 shall accompany the statement of registration. Such registration shall not be considered complete, and a purchasing group shall not do business in this State, unless the required fee is duly paid. The superintendent will not act as agent for the receipt of any legal documents or process unless the purchasing group has filed its statement of registration in accordance with section 5908 of the Insurance Law and this section.

(e) Any purchasing group doing business in this State prior to December 10, 1988 which has not already filed its registration documents in the form prescribed by the superintendent, including all of the provisions required by this Part, shall file a statement of registration which complies with this Part on or before January 10, 1989.

(f) The registration requirements of this section shall not apply to any purchasing group exempted from such requirements by section 5908(d)(3) of the Insurance Law.