

**Proposed Substitute
Bill No. 1026**

LCO No. 5012

**AN ACT CONCERNING THE REGULATION OF RISK RETENTION
GROUPS.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 38a-250 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2015*):

3 For purposes of sections 38a-250 to 38a-266, inclusive, and section 3
4 of this act:

5 (1) "Completed operations liability" means liability arising out of the
6 installation, maintenance or repair of any product at a site which is not
7 owned or controlled by any person who hires an independent
8 contractor to perform that work, and shall include liability for
9 activities which are completed or abandoned before the date of the
10 occurrence giving rise to the liability;

11 (2) "Doing business" means effecting any of the following acts in this
12 state by mail or otherwise: (A) The making of or proposing to make, as
13 an insurer, an insurance contract; (B) the making of or proposing to
14 make, as guarantor or surety, any contract of guaranty or suretyship as
15 a vocation and not merely incidental to any other legitimate business
16 or activity of the guarantor or surety; (C) the taking or receiving of any
17 application for insurance; (D) the receiving or collection of any

18 premium, commission, membership fees, assessments, dues or other
19 consideration for any insurance or any party thereof; (E) the issuance
20 or delivery of contracts of insurance to residents of this state or to
21 persons authorized to do business in this state; (F) directly or indirectly
22 acting as an agent for or otherwise representing or aiding on behalf of
23 another any person or insurer in the solicitation, negotiation,
24 procurement or effectuation of insurance or renewals thereof or in the
25 dissemination of information as to coverage or rates, or forwarding of
26 applications, or delivery of policies or contracts, or inspection of risks,
27 a filing of rates or investigation or adjustment of claims or losses or in
28 the transaction of matters subsequent to effectuation of the contract
29 and arising out of it, or in any other manner representing or assisting a
30 person or insurer in the transaction of insurance with respect to
31 subjects of insurance resident, located or to be performed in this state;
32 (G) the doing of or proposing to do any insurance business in
33 substance equivalent to any of the foregoing in a manner designed to
34 evade the provisions of the general statutes relating to insurance; and
35 (H) any other transactions of business in this state by an insurer. The
36 venue of an act committed by mail is at the point where the matter
37 transmitted by mail is delivered and takes effect;

38 (3) "Domicile", for purposes of determining the state in which a
39 purchasing group is domiciled, means (A) for a corporation, the state
40 in which the purchasing group is incorporated, and (B) for an
41 unincorporated entity, the state of its principal place of business;

42 (4) "Hazardous financial condition" means that, based on its present
43 or reasonably anticipated financial condition, a risk retention group is
44 unlikely to be able (A) to meet obligations to policyholders with
45 respect to known claims and reasonably anticipated claims, or (B) to
46 pay other obligations in the normal course of business;

47 (5) "Insurance" means primary insurance, excess insurance,
48 reinsurance, surplus lines insurance and any other arrangement for
49 shifting and distributing risk which is determined to be insurance
50 under applicable state or federal law;

51 (6) "Liability" means legal liability for damages, including costs of
52 defense, legal costs and fees, and other claims expenses, because of
53 injuries to other persons, damage to their property or other damage or
54 loss to such other persons resulting from or arising out of (A) any
55 business, whether profit or nonprofit, trade, product, services,
56 including professional services, premises or operations, or (B) any
57 activity of any state or local government or any agency or political
58 subdivision thereof. "Liability" does not include personal risk liability
59 and an employer's liability with respect to its employees other than
60 legal liability under the Federal Employers' Liability Act (45 USC 51 et
61 seq.);

62 (7) "Personal risk liability" means liability for damages because of
63 injury to any person, damage to property or other loss or damage
64 resulting from any personal, familial or household responsibilities or
65 activities, rather than from responsibilities or activities referred to in
66 subdivision (6) of this section;

67 (8) "Plan of operation or a feasibility study" means an analysis
68 [which] that presents the expected activities and results of a risk
69 retention group including, at a minimum, (A) for each state in which it
70 intends to operate, the coverages, deductibles, coverage limits, rates
71 and rating classification systems for each line of insurance the group
72 intends to offer, (B) historical and expected loss experience of the
73 proposed members and national experience of similar exposures to the
74 extent that this experience is reasonably available, (C) pro forma
75 financial statements and projections, (D) appropriate opinions by an
76 independent member of the American Academy of Actuaries,
77 including a determination of minimum premium or participation
78 levels required to commence operations and to prevent a hazardous
79 financial condition, (E) information sufficient to verify that its
80 members are engaged in businesses or activities similar or related with
81 respect to the liability to which such members are exposed by virtue of
82 any related, similar or common business, trade, product, services,
83 premises or operations, (F) identification of management,
84 underwriting and claims procedures, marketing methods, managerial

85 oversight methods, investment policies and reinsurance agreements,
86 (G) identification of each state in which the risk retention group has
87 obtained, or sought to obtain, a charter and license, and a description
88 of its status in each such state, and (H) such other matters as may be
89 prescribed by the commissioner of the state in which the risk retention
90 group is chartered for liability insurance companies authorized by the
91 insurance laws of that state;

92 (9) "Product liability" means liability for damages because of any
93 personal injury, death, emotional harm, consequential economic
94 damage, or property damage, including damages resulting from loss
95 of use of property, arising out of the manufacture, design, importation,
96 distribution, packaging, labeling, lease or sale of a product. [but]
97 "Product liability" does not include the liability of any person for those
98 damages if the product involved was in the possession of such a
99 person when the incident giving rise to the claim occurred;

100 (10) "Purchasing group" means any group [which] that: (A) Has as
101 one of its purposes the purchase of liability insurance on a group basis;
102 (B) purchases such insurance only for its group members and only to
103 cover their similar or related liability exposure, as described in
104 subparagraph (C) of this subdivision; (C) is composed of members
105 whose businesses or activities are similar or related with respect to the
106 liability to which members are exposed by virtue of any related,
107 similar or common business, trade, product, services, premises or
108 operations; and (D) is domiciled in any state;

109 (11) "Risk retention group" means any corporation or other limited
110 liability association: (A) Whose primary activity consists of assuming
111 and spreading all, or any portion, of the liability exposure of its group
112 members; (B) [which] that is organized for the primary purpose of
113 conducting the activity described under subparagraph (A) of this
114 subdivision; (C) [which] that (i) is chartered and licensed as a liability
115 insurance company under the laws of a state and authorized to engage
116 in the business of insurance under the laws of such state, or (ii) before
117 January 1, 1985, was chartered or licensed and authorized to engage in

118 the business of insurance under the laws of Bermuda or the Cayman
119 Islands and, before such date, had certified to the insurance
120 commissioner of at least one state that it satisfied the capitalization
121 requirements of such state, except that any such group shall be
122 considered to be a risk retention group only if it has been engaged in
123 business continuously since such date and only for the purpose of
124 continuing to provide insurance to cover product liability or
125 completed operations liability, as such terms were defined in the
126 Product Liability Risk Retention Act of 1981, (15 USC 3901 et seq.),
127 before the date of the enactment of the Liability Risk Retention Act of
128 1986; (D) [which] that does not exclude any person from membership
129 in the group solely to provide for members of such a group a
130 competitive advantage over such a person; (E) [which] that (i) has as
131 its owners only persons who comprise the membership of the risk
132 retention group and who are provided insurance by such group, or (ii)
133 has as its sole owner an organization [which] that has as its members
134 only persons who comprise the membership of the risk retention
135 group, and as its owners only persons who comprise the membership
136 of the risk retention group and who are provided insurance by such
137 group; (F) whose members are engaged in businesses or activities
138 similar or related with respect to the liability to which such members
139 are exposed by virtue of any related, similar or common business,
140 trade, product, services, premises or operations; (G) whose activities
141 do not include the provision of insurance other than (i) liability
142 insurance for assuming and spreading all or any portion of the similar
143 or related liability exposure of its group members, and (ii) reinsurance
144 with respect to the similar or related liability exposure of any other risk
145 retention group, or any member of such other group, [which] that is
146 engaged in businesses or activities so that such group or member
147 meets the requirement described in subparagraph (F) of this
148 subdivision for membership in the risk retention group [which] that
149 provides such reinsurance; and (H) the name of which includes the
150 phrase "Risk Retention Group";

151 (12) "State" means any state of the United States or the District of

152 Columbia.

153 Sec. 2. Section 38a-251 of the general statutes is repealed and the
154 following is substituted in lieu thereof (*Effective October 1, 2015*):

155 (a) A risk retention group seeking to be chartered in this state shall
156 be chartered and licensed as a liability insurance company authorized
157 by the insurance laws of this state and, except as provided in sections
158 38a-250 to 38a-266, inclusive, as amended by this act, shall comply
159 with all [of the] laws, rules, regulations and requirements applicable to
160 such insurers chartered and licensed in this state, and with section 38a-
161 252, as amended by this act, to the extent such requirements are not a
162 limitation on laws, rules, regulations or requirements of this state.

163 (b) Before it may offer insurance in any state, each risk retention
164 group shall [also] submit for approval to the Insurance Commissioner
165 [of this state] (1) a plan of operation or a feasibility study; and (2)
166 revisions [of] to such plan or study [if the group intends to] of any
167 material change in any item of such plan or study, not later than ten
168 days after any such change occurs or has been made. A risk retention
169 group shall not offer any additional lines of liability insurance in this
170 state or any other state until such plan or study has been revised and
171 the commissioner has approved such revision.

172 (c) A risk retention group shall provide to the commissioner with its
173 application filing for charter the following information in summary
174 form: (1) The identity of the initial members of the group; (2) the
175 identity of the individuals who organized the group or who will
176 provide administrative services or influence or control coverages to be
177 offered; and (3) the states in which the group intends to operate. The
178 commissioner shall forward such information upon receipt to the
179 National Association of Insurance Commissioners.

180 Sec. 3. (NEW) (*Effective October 1, 2015*) (a) Each risk retention group
181 seeking to be chartered and licensed in this state shall comply with the
182 following governance standards at the time of licensure or, for a risk
183 retention group chartered in this state prior to October 1, 2015, not

184 later than October 1, 2016:

185 (1) (A) Each risk retention group shall be governed by a board of
186 directors who are elected by the owners or members of such group. A
187 majority of the board of directors shall be independent.

188 (B) If a risk retention group is a reciprocal risk retention group, the
189 attorney-in-fact acting as the agent or manager of such group shall be
190 independent, as described in subparagraphs (D) and (E) of this
191 subdivision, and comply with the governance standards set forth in
192 this section.

193 (C) The members of any member advisory committees established
194 by the board of directors of a risk retention group shall be
195 independent, as described in subparagraphs (D) and (E) of this
196 subdivision, and comply with the governance standards set forth in
197 this section.

198 (D) (i) For the purposes of this section, no director shall qualify as
199 independent unless the board of directors affirmatively determines
200 that such director has no material relationship with such risk retention
201 group. Any individual who is a direct or an indirect owner of or an
202 insured in the risk retention group as described in subparagraph (E)(ii)
203 of subdivision (11) of section 38a-250 of the general statutes, as
204 amended by this act, or is an officer, director or employee of such an
205 owner or insured, shall be deemed to be independent unless a different
206 position or relationship of such owner, member, officer, director or
207 employee constitutes a material relationship.

208 (ii) Each risk retention group shall disclose such determinations at
209 least annually to the Insurance Commissioner.

210 (E) As used in this section, "material relationship" includes, but is
211 not limited to:

212 (i) The receipt by an individual set forth in subparagraphs (A) to
213 (C), inclusive, of this subdivision, such individual's immediate family

214 member or any business with which such individual is affiliated, from
215 the risk retention group or a consultant to or service provider for such
216 group, of compensation or payment in any one twelve-month period
217 of five per cent or greater of the risk retention group's gross written
218 premiums for such twelve-month period or two per cent of its surplus,
219 whichever is greater. Such individual shall not be deemed to be
220 independent for the purposes of this section until one year after such
221 compensation or payment from such group falls below the threshold
222 set forth herein;

223 (ii) The affiliation or employment in a professional capacity of a
224 director or a director's immediate family member with a present or
225 former internal or external auditor of the risk retention group. Such
226 director shall not be deemed to be independent for the purposes of this
227 section until one year after the end of such affiliation or employment
228 or the auditing relationship; and

229 (iii) The employment of a director or a director's immediate family
230 member, as an executive officer with another company at which any of
231 the risk retention group's current officers serve as members of such
232 other company's board of directors. Such director shall not be deemed
233 independent for the purposes of this section until one year after the
234 end of such employment or service.

235 (2) (A) No material contract between a risk retention group and a
236 service provider shall include a term that exceeds five years. A contract
237 is deemed to be material if the amount paid under such contract is five
238 per cent or greater than the risk retention group's annual gross written
239 premiums or two per cent of its surplus, whichever is greater. The
240 board of directors shall approve by a majority vote any such contract
241 or its renewal. The board of directors may terminate any such contract
242 for cause at any time, provided any notice requirement included in
243 such contract is satisfied.

244 (B) No service provider contract under which a material
245 relationship would exist shall be entered into unless the risk retention

246 group has notified the commissioner in writing of its intent to enter
247 into such contract at least thirty days prior to entering into such
248 contract and the commissioner has not disapproved it within such
249 period.

250 (C) Any contract between a reciprocal risk retention group and a
251 service provider shall be between such group and not the attorney-in-
252 fact for such group.

253 (D) As used in this subsection, (i) "service provider" means a captive
254 manager, an auditor, an accountant, an actuary, an investment advisor,
255 an attorney, a managing general underwriter and any other party
256 responsible for underwriting, determining premium rates, collecting
257 premiums, adjusting and settling claims and preparing financial
258 statements. An attorney under this subparagraph does not include
259 defense counsel retained by a risk retention group to defend claims
260 unless the attorneys' fees for such counsel are material, as described in
261 subparagraph (A) of this subdivision, and (ii) "captive manager" means
262 an individual or entity contracted by a captive insurance company, as
263 defined in section 38a-91aa of the general statutes, to manage such
264 company's affairs.

265 (3) The board of directors of each risk retention group shall adopt a
266 written policy in its plan of operation or a feasibility study that
267 requires the board of directors to: (A) Ensure that all owners and
268 members of such group receive evidence of ownership interest; (B)
269 develop a set of governance standards applicable to such group; (C)
270 oversee the evaluation of such group's management, including, but not
271 limited to, the performance of the captive manager, managing general
272 underwriter or other parties responsible for underwriting, determining
273 premium rates, collecting premiums, adjusting and settling claims and
274 preparing financial statements; (D) review and approve the amount to
275 be paid to a service provider under a material service contract; and (E)
276 review and approve at least annually (i) such group's goals and
277 objectives relative to the compensation of its officers and service
278 providers, (ii) such officers' and service providers' performances in

279 light of such goals and objectives, and (iii) the continued engagement
280 of such officers and service providers.

281 (4) (A) Each risk retention group shall establish an audit committee
282 composed of at least three independent members of the board of
283 directors. The audit committee may invite a nonindependent member
284 of the board of directors to participate in such committee's activities,
285 but such nonindependent member shall not be a member of such
286 committee.

287 (B) The audit committee shall adopt a written charter that defines
288 the committee's purposes that shall, at a minimum, be to: (i) Assist the
289 board of directors with oversight of the integrity of financial
290 statements, compliance with legal and regulatory requirements and
291 the qualifications, independence and performance of any auditor or
292 actuary contracted with by the risk retention group; (ii) discuss the
293 annual audited financial statements and the quarterly financial
294 statements with members of the management of the risk retention
295 group; (iii) discuss the annual audited financial statements and, if
296 advisable, the quarterly financial statements, with such group's
297 external auditor; (iv) discuss policies with respect to such group's risk
298 assessment and risk management; (v) meet separately and
299 periodically, directly or through a designated member of the
300 committee, with members of the management of the risk retention
301 group and with such group's external auditor; (vi) review with such
302 group's external auditor any audit problems or difficulties and the
303 response from members of the management of such group; (vii) set
304 clear hiring policies for the risk retention group for the hiring of
305 employees of or former employees of such group's external auditor;
306 (viii) require such group's external auditor to rotate or coordinate the
307 lead auditor having primary responsibility for such group's audit and
308 the auditor responsible for reviewing such group's audit so that no
309 individual performs audit services for such group for more than five
310 consecutive years; and (ix) report on its activities regularly to the risk
311 retention group's board of directors.

312 (C) The commissioner may waive the requirement to establish an
313 audit committee if a risk retention group demonstrates to the
314 commissioner that it is impracticable to do so and such group's board
315 of directors is itself able to accomplish the purposes of such committee,
316 as set forth in subparagraph (B) of this subdivision.

317 (5) (A) The board of directors of a risk retention group shall adopt
318 governance standards for such group and a code of business conduct
319 and ethics for the officers, directors and employees of such group.
320 Such code shall include, but not be limited to, (i) conflicts of interest,
321 (ii) the matters covered under the corporate opportunities doctrine in
322 the risk retention group's state of domicile, (iii) confidentiality, (iv) fair
323 dealing, (v) the protection and proper use of the assets of such group,
324 (vi) compliance with all laws, rules, regulations and requirements
325 applicable to such group, (vii) the required reporting of any illegal or
326 unethical behavior that affects the operations of the risk retention
327 group, and (viii) any waivers of such code for officers or directors.

328 (B) The board of directors shall disclose the standards and code set
329 forth in subparagraph (A) of this subdivision by posting such
330 standards and code to the risk retention group's Internet web site or by
331 other means. The board of directors shall provide to members and
332 insureds, upon request, additional information that includes (i) the
333 process by which members of the board of directors are elected, (ii) the
334 qualifications required to be a member of the board of directors, (iii)
335 the responsibilities of the board of directors, (iv) the access of a
336 member of the board of directors to members of the management of
337 the risk retention group and to independent advisors, (v) the
338 compensation for serving as a member of the board of directors, (vi)
339 the orientation process for and continuing education requirements or
340 opportunities for a member of the board of directors, (vii) the policies
341 and procedures followed by the risk retention group for management
342 succession, and (viii) the policies and procedures followed by the risk
343 retention group for the annual performance evaluation of the members
344 of the board of directors.

345 (6) The captive manager, president or chief executive officer of a risk
346 retention group shall notify the commissioner promptly in writing if
347 such manager, president or chief executive officer becomes aware of
348 any material noncompliance with the provisions of this section.

349 (b) The commissioner may examine any documents or materials
350 relating to the requirements set forth in this section for a risk retention
351 group chartered and licensed in this state.

352 Sec. 4. Section 38a-252 of the general statutes is repealed and the
353 following is substituted in lieu thereof (*Effective October 1, 2015*):

354 (a) Risk retention groups chartered in states other than this state and
355 seeking to do business as a risk retention group in this state shall, prior
356 to offering insurance in this state submit to the Insurance
357 Commissioner: (1) A statement identifying the state or states in which
358 the risk retention group is chartered and licensed as a liability
359 insurance company, date of chartering, its principal place of business
360 [] and such other information, including information on its
361 membership, as the commissioner may require to verify that the risk
362 retention group satisfies the [definitional] requirements of [subdivision
363 (11) of] a risk retention group, as defined in section 38a-250, as
364 amended by this act; (2) a copy of its plan of operations or a feasibility
365 study and revisions of such plan or study submitted to its state of
366 domicile, provided the provision relating to the submission of a plan of
367 operation or a feasibility study shall not apply with respect to any line
368 or classification of liability insurance [which] that (A) was defined in
369 the Product Liability Risk Retention Act of 1981 before the date of the
370 enactment of the Liability Risk Retention Act of 1986, and (B) was
371 offered before such date by any risk retention group [which] that had
372 been chartered and operating for not less than three years before such
373 date; and (3) a statement of registration [which] that designates the
374 commissioner as its agent for the purpose of receiving service of legal
375 documents or process.

376 (b) A risk retention group under subsection (a) of this section shall

377 submit to the commissioner a copy of any material revisions of its plan
378 of operations or a feasibility study submitted to its state of domicile not
379 later than thirty days after the date the chief insurance regulatory
380 official of such group's state of domicile approves such revisions or, if
381 no such approval is required, not later than thirty days after
382 submission to such group's state of domicile.

383 Sec. 5. Section 38a-253 of the general statutes is repealed and the
384 following is substituted in lieu thereof (*Effective October 1, 2015*):

385 (a) Each risk retention group not domiciled in this state that is doing
386 business in this state shall submit to the Insurance Commissioner: (1) A
387 copy of the group's financial statement submitted to its state of
388 domicile, [which] that shall be certified by an independent public
389 accountant and contain a statement of opinion on loss and loss
390 adjustment expense reserves made by a member of the American
391 Academy of Actuaries or a qualified loss reserve specialist under
392 criteria established by the National Association of Insurance
393 Commissioners; (2) a copy of each examination of the risk retention
394 group as certified by the commissioner or public official conducting
395 the examination; (3) upon request by the commissioner, a copy of any
396 information or document pertaining to any outside audit performed
397 with respect to the risk retention group; and (4) such information as
398 may be required to verify that [it] such risk retention group satisfies
399 the [definitional] requirements of [subdivision (11) of] a risk retention
400 group, as defined in section 38a-250, as amended by this act.

401 (b) Each risk retention group doing business in this state shall,
402 annually, on or before the first day of March, submit to the
403 commissioner, by electronically filing with the National Association of
404 Insurance Commissioners, a true and complete report, signed and
405 sworn to by its president or a vice president, and secretary or an
406 assistant secretary, of its financial condition on the thirty-first day of
407 December next preceding, prepared as submitted to its state of
408 domicile.

409 (c) Each risk retention group shall submit to an examination by the
410 Insurance Commissioner to determine its financial condition if the
411 commissioner of the jurisdiction in which the group is chartered and
412 licensed has not initiated an examination or does not initiate an
413 examination within sixty days after a request by the Insurance
414 Commissioner of this state. Any such examination shall be coordinated
415 to avoid unjustified repetition and conducted in an expeditious
416 manner and in accordance with the National Association of Insurance
417 Commissioners' Examiner Handbook.

418 Sec. 6. Section 38a-255 of the general statutes is repealed and the
419 following is substituted in lieu thereof (*Effective October 1, 2015*):

420 [Any] Each application for insurance from a risk retention group
421 and each policy issued by a risk retention group shall contain in ten
422 point type on the front page and the declaration page, the following
423 notice:

424 NOTICE

425 This policy is issued by your risk retention group. Your risk retention
426 group may not be subject to all of the insurance laws and regulations
427 of your state. State insurance insolvency guaranty funds are not
428 available for your risk retention group.

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| This act shall take effect as follows and shall amend the following sections: | | |
| Section 1 | <i>October 1, 2015</i> | 38a-250 |
| Sec. 2 | <i>October 1, 2015</i> | 38a-251 |
| Sec. 3 | <i>October 1, 2015</i> | New section |
| Sec. 4 | <i>October 1, 2015</i> | 38a-252 |
| Sec. 5 | <i>October 1, 2015</i> | 38a-253 |
| Sec. 6 | <i>October 1, 2015</i> | 38a-255 |