

PROPOSED RULES

**NORTH DAKOTA ADMINISTRATIVE CODE
CHAPTER 45-05-05
RISK RETENTION AND PURCHASING GROUPS**

Section 45-05-05-06, relating to risk retention group representatives and purchasing group representatives, is amended as follows:

45-05-05-06. Risk retention group representatives and purchasing group representatives.

1. License requirement. No person, resident or nonresident in this state, may act as or hold out in this state to be a risk retention group representative for a risk retention group, or a purchasing group representative for a purchasing group which solicits members for the purpose of selling liability insurance coverage, purchases liability insurance coverage for group members located within this state or otherwise does business in this state unless then licensed as such under these rules.
2. Any person, resident or nonresident in this state, acting as or holding out in this state to be a risk retention group representative or a purchasing group representative must either:
 - a. ~~Hold~~ hold a current North Dakota insurance producer license ~~as agent or broker~~, in the lines of insurance represented, and must be appointed by the risk retention group or purchasing group represented in North Dakota; ~~or~~
 - b. ~~Be the holder of a current North Dakota nonresident license as agent or broker in another state, in the lines of insurance represented, and must be appointed by the risk retention group or purchasing group represented in North Dakota.~~
3. Any person acting as a risk retention group representative or purchasing group representative ~~in compliance with subdivision a or b of subsection 2~~ shall otherwise be subject to and comply with the provisions of North Dakota Century Code chapter 26.1-46 as they pertain to ~~agents and brokers~~ insurance producers.
4. Exceptions to license requirement. Risk retention group representative and purchasing group representative for the purpose of licensing does not include:

- a. Any officer, director, owner, partner, trustee, or full-time salaried employee of a risk retention group or purchasing group; and
 - b. Any telemarketing or mass mailing organization or any radio or television station or network or, newspaper or magazine publisher or distributor which makes statements or carries advertisements for a risk retention group or purchasing group to the extent only general, nonrisk specific information is given concerning the Federal Liability Risk Retention Act, North Dakota Century Code chapter 26.1-46, and the risk retention group or purchasing group and no application for insurance is received, no underwriting information is taken, and no insurance rate or premium is quoted or collected.
5. Licensing of partnership or corporation.
- a. A partnership or corporation may be licensed as a risk retention group representative or purchasing group representative. Each general partner and each other individual authorized to act for the partnership and each individual authorized to act for the corporation must be named in the license or registered with the commissioner and shall qualify as through an individual licensee; and
 - b. The licensee shall promptly notify the commissioner of any changes among its members, directors, officers, and other individuals designated in or registered as to the license.
- ~~6. Risk retention group representative and purchasing group representative bond. Prior to issuance of an appointment as a risk retention group representative or purchasing group representative for any risk retention group or insurer not chartered in this state, the applicant shall file with the commissioner, and shall keep in force for as long as such an appointment remains in effect, a bond in favor of the state of North Dakota in the penal sum of one thousand dollars, with an authorized corporate surety the commissioner approves, conditioned that the person will conduct business under the person's risk retention group or purchasing group license in accordance with North Dakota Century Code chapter 26.1-46 and this chapter and that the person will promptly remit the taxes pursuant to North Dakota Century Code section 26.1-46-03. Any risk retention group representative or purchasing group representative licensed as a surplus line broker in the state of North Dakota and maintaining a bond pursuant to North Dakota Century Code section 26.1-26-18 or previously appointed by a risk retention group or insurer not chartered in this state group or unauthorized insurer and maintaining a bond pursuant to this section shall not be subject to any additional bond requirement. The aggregate liability~~

~~of the surety for any claims on the bond may not exceed the penal sum of the bond. The bond shall not be terminated unless not less than thirty days' prior written notice thereof is given to the licensee and filed with the commissioner.~~

History: Effective October 1, 1989; amended effective _____.

General Authority: NDCC 26.1-46-13, 28-32-02

Law Implemented: NDCC 26.1-46

Section 45-05-05-08, relating to insurance purchase, is amended as follows:

45-05-05-08. Insurance purchase. Any purchasing group duly authorized to do business in the state of North Dakota may purchase insurance only from the following sources:

1. A risk retention group authorized to do business in this state.
2. An admitted insurance carrier.
3. An authorized surplus lines carrier listed on the commissioner's white list, only if the purchase is effected through a licensed surplus lines ~~broker~~ producer who has been appointed by the purchasing group.

History: Effective October 1, 1989; amended effective _____.

General Authority: NDCC 26.1-46-13, 28-32-02

Law Implemented: NDCC 26.1-46

The Application for Registration as a Purchasing Group is amended as follows:

**STATE OF NORTH DAKOTA
INSURANCE DEPARTMENT
APPLICATION FOR REGISTRATION AS A PURCHASING GROUP**

We, the undersigned President (or Chief Executive Officer) and Secretary, on behalf of _____, make

(Name of Purchasing Group)

application for registration in North Dakota as a Purchasing Group ("Group") and do hereby affirm that:

1. The Group is domiciled in the State of _____.
2. The Group's principal place of business (street and mailing address) is:

3. The Group is composed of members whose business 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 general description of business or activities engaged in by Group members):

4. The Group has as one of its purposes the purchase of liability insurance on a group basis.
5. The Group purchases such liability insurance only for its group members and only to cover their similar or related liability exposure, as described in item (3) above.
6. The Group intends to purchase the following lines and classifications of liability insurance: _____

7. The Group intends to purchase the liability insurance described in item (6) above from the following insurance company or companies (Give full name of company and state of domicile):

8. The name and address of the ~~broker or agent~~ insurance producer licensed by the insurance commissioner through whom purchases in North Dakota will be effected are as follows: _____

9. The Group has designated the insurance commissioner of North Dakota to be its agent solely for the purpose of receiving service of legal documents.
10. The Group's federal identification number is: _____

We do hereby swear and affirm that the aforementioned statements and information are true and correct.

President or Chief Executive Officer

Secretary

Sworn to before me this _____
day of _____, 20__,

Notary Public
State of _____
My Commission Expires: _____

The Application for Registration as a Risk Retention Group (Foreign) is amended as follows:

**STATE OF NORTH DAKOTA
INSURANCE DEPARTMENT
APPLICATION FOR REGISTRATION AS
A RISK RETENTION GROUP
(FOREIGN)**

We, the undersigned President (or Chief Executive Officer) and Secretary, on behalf of _____

(Name must include the phrase "Risk Retention Group")

located at _____
make application for registration in North Dakota as a Risk Retention Group ("Group") and do hereby affirm that:

1. The primary activity of this Group consists of assuming and spreading all, or any portion, of the liability exposure of its Group members.
2. The Group is organized for the primary purpose of conducting the activity described under (1) above.
3. The Group is chartered and licensed as a liability insurance company under the laws of the State of _____, and is authorized to engage in the business of insurance under the laws of its chartering state.
4. The Group does not exclude any person from its membership in the Group solely to provide for members of the Group a competitive advantage over such a person.
5. Ownership of the Group consists of one or the other of the following (check one):

_____ the owners of the Group are only persons who comprise the membership of the Group and who are provided insurance by the Group;

_____ the sole owner of the Group is

(Give name and address of organization)

an organization whose members only comprise the membership of the Group, and whose owners are only persons who comprise the membership of the Group and who are provided insurance by the Group.

- 6. The Group is composed of members who are engaged in the following described business or activities, which are similar or related with respect to the liability to which such members are exposed by virtue of related, similar, or common business, trade, produce, services, premises or operations (Give general description of business or activities engaged in by Group members): _____

- 7. The activities of the Group do not include the provision of insurance other than:
 - a. liability insurance for assuming and spreading all or any portion of the similar or related liability exposure of its group members; and
 - b. reinsurance with respect to the similar or related liability exposure of another risk retention group (or a member of such other risk retention group) engaged in businesses or activities which qualify such other risk retention group (or member) under item (6) above for membership in this Group.
- 8. The Group will comply with the unfair claim settlement practices laws of North Dakota.
- 9. The Group will pay, on a nondiscriminatory basis, applicable premium and other taxes which are levied on admitted insurers under the laws of North Dakota.
- 10. The Group will participate, on a nondiscriminatory basis, in any mechanism established or authorized under the laws of North Dakota for the equitable apportionment among insurers of liability insurance losses and expenses incurred on policies written through such mechanism.
- 11. The Group has designated the Insurance Commissioner of North Dakota to be its agent solely for the purpose of receiving service of legal documents or process.
- 12. The Group will submit to examination by the Insurance Commissioner to determine the Group's financial condition, if:

- a. the insurance commissioner of the Group's chartering state has not begun or has refused to initiate an examination of the Group; and
 - b. any such examination by the Insurance Commissioner is coordinated so as to avoid unjustified duplication and unjustified repetition.
13. The Group will comply with a lawful order issued in a delinquency proceeding commenced by the Insurance Commissioner upon a finding of financial impairment, or in a voluntary dissolution proceeding.
14. The Group will comply with the laws of North Dakota concerning deceptive, false or fraudulent acts or practices, including any injunctions regarding such conduct obtained from a court of competent jurisdiction.
15. The Group will comply with an injunction issued by a court of competent jurisdiction upon petition by the Insurance Commissioner alleging that the Group is in hazardous financial condition or is financially impaired.
16. The Group will provide the following notice, in 10-point type, in any insurance policy issued by the Group:

"NOTICE

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

17. The Group has submitted to the Insurance Commissioner, as part of this application and before it has offered any insurance in North Dakota, a copy of the plan of operation or feasibility study which it has filed with the Insurance Commissioner of its chartering state. The plan or study submitted herewith discloses the name of the state in which the Group is chartered, as well as the Group's principal place of business, and such plan or study further includes the coverages, deductibles, coverage limits, rates, and rating classification systems for each line of insurance the Group intends to offer. The Group will promptly submit to the Insurance Commissioner any revisions of such plan or study to reflect any changes therein including, but without limitation, additional lines of liability insurance which the Group intends to offer, and any change in the designation of the Group's chartering state.
18. The Group has submitted to the Insurance Commissioner, as part of this application, a copy of the Group's annual financial statement submitted to the state in which it is chartered as an insurance company. The annual

financial statement has been certified by an independent public accountant and contains a statement of opinion on loss and loss adjustment expense reserves made by a member of the American Academy of Actuaries or a qualified loss reserve specialist. Hereafter, the Group will submit its annual financial statement to the Insurance Commissioner by March 1 of each year.

- 19. The Group will not solicit or sell insurance to any person in North Dakota who is not eligible for membership in the Group.
- 20. The Group will not solicit or sell insurance in North Dakota, or otherwise operate in this state, if the Group is financially impaired or is in a hazardous financial condition.
- 21. The name and address of the ~~broker(s) or agent(s)~~ insurance producer(s) licensed by the Insurance Commissioner through whom purchases in North Dakota will be effected are as follows: _____

- 22. The Group's federal identification number is _____.

We do hereby swear and affirm that the aforementioned statements and information are true and correct.

President or Chief Executive Officer

Secretary

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

Notary Public, State of:
My Commission Expires: