

PROJECT HISTORY - 2011

MODEL RISK RETENTION ACT (#705)

1. Description of the Project, Issues Addressed, etc.

A request to amend the *Model Risk Retention Act* (#705) was adopted by the Executive (EX) Committee at the 2010 Fall National Meeting. The request was developed based upon the the Risk Retention (C) Working Group's consideration of developing corporate governance standards to respond to accreditation and corporate governance issues. The corporate governance standards were adopted by the Property and Casualty (C) Committee in June 2007 and referred to the Financial Condition (E) Committee for consideration to include the standards in the Property/Casualty Annual Statement Instructions. The Risk Retention (E) Task Force found that the Annual Statement Instructions were not the proper place for this guidance, but instead, should be incorporated into a model law or regulation so that a state insurance department could compel the RRG to comply with these requirements.

2. Name of Group Responsible for Drafting the Model and States Participating

The Risk Retention Handbook and Model Law Amendment Subgroup of the Risk Retention (C) Working Group drafted most of the changes to the Act. Members of the Subgroup include: California (Chair), Delaware, District of Columbia, Florida, Hawaii, Louisiana, Mississippi, Missouri, Nevada, New York, Oklahoma, South Carolina, Utah, Vermont and Washington.

3. Project Authorized by What Charge and Date First Given to the Group

A request to amend the *Model Risk Retention Act* (#705) was adopted by the Executive (EX) Committee at the 2010 Fall National Meeting.

4. A General Description of the Drafting Process (e.g., drafted by a subgroup, interested parties, the full group, etc). Include any parties outside the members that participated

The Risk Retention Handbook and Model Law Amendment Subgroup made most of the edits to the Act. All conference calls were open to interested parties who participated in the development of the amendments throughout the process. Interested parties participating via conference call and written comments include: Vermont Captive Insurance Association, OMS National Insurance Company, National Risk Retention Association, New Home Warranty Insurance Company Risk Retention Group, RAA and NAMIC.

5. A General Description of the Due Process (e.g., exposure periods, public hearings, or any other means by which widespread input from industry, consumers and legislators was solicited)

The Risk Retention Handbook and Model Law Amendment Subgroup held six conference calls discussing the edits to the Model Act. The Subgroup held one formal written comment period and heard from numerous interested parties on the conference calls. The Risk Retention (C) Working Group held two separate 30-day comment periods and sent comments back to the Subgroup for review. No comments were received during the second comment period. A further clarification on the Act was requested during a Sept. 16 conference call of the Property and Casualty Insurance (C) Committee. This technical change was made during an Oct. 3 conference call of the Risk Retention (C) Working Group.

6. A Discussion of the Significant Issues (items of some controversy raised during the due process and the group's response)

There was discussion on when risk retention groups would need to comply with the corporate governance provisions within the Act. Some parties wanted six months, but it was decided that one year would be the most reasonable requirement. It was also decided that new risk retention groups need to be in compliance with the standards at the time of licensure.

A paragraph on enforcement stating that the "risk retention group's domestic regulator may take appropriate regulatory action against any director or officer of the risk retention group or its captive manager, pursuant to its laws and regulations, if the risk retention group or captive manager violates these governance standards" was included within the original corporate governance standards. It was decided that this paragraph should be deleted because states already have full authority to enforce compliance with applicable laws and regulations.

Discussion was held whether to delete a section requiring the captive manager, president, or chief executive officer of the risk retention group to notify the domestic regulator in writing of any material non-compliance. Ultimately, the group decided to leave the section in.

Several drafting notes were added to the Act for the sake of clarity. There was general agreement among all parties to include the notes.

As stated above, a change to the Act that did not involve the corporate governance standards was made during an Oct. 3 conference call of the Risk Retention (C) Working Group. The Model previously read that that a risk retention group must submit a copy of a revision to its plan of operation to a non-chartering state at the same time that the revision is submitted to the commissioner of the chartering state. A change was made to require that a revision be submitted after the chartering state has approved the revision. All parties agreed that this change made sense because the nondomestic state should not be burdened with proposed plans that are not approved.

7. Any Other Important Information (e.g., amending an accreditation standard).

The revisions to the Act were made in order to incorporate corporate governance standards into the Act with the expectation that they will be accreditation standards. The Property and Casualty Insurance (C) Committee and the Risk Retention (C) Working Group recommend that the Financial Regulation Standards and Accreditation (F) Committee consider the corporate governance standards within the Act as an accreditation standard.