

By: Senator(s) Kirby

To: Insurance

SENATE BILL NO. 2490

1 AN ACT TO AMEND SECTION 83-55-7, MISSISSIPPI CODE OF 1972, TO  
2 PROVIDE THAT OUT-OF-STATE RISK RETENTION GROUPS SHALL BE SUBJECT  
3 TO TAXATION, AND ANY APPLICABLE FINES AND PENALTIES RELATED  
4 THERETO, ON THE SAME BASIS AS ELIGIBLE NONADMITTED INSURERS; TO  
5 AMEND SECTION 83-55-16, MISSISSIPPI CODE OF 1972, TO DELETE THE  
6 ANNUAL REGISTRATION FEE REQUIRED TO BE PAID BY RISK RETENTION  
7 GROUPS OR RISK PURCHASING GROUPS; AND FOR RELATED PURPOSES.

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

9 **SECTION 1.** Section 83-55-7, Mississippi Code of 1972, is  
10 amended as follows:

11 83-55-7. Risk retention groups chartered and licensed in  
12 states other than this state and seeking to do business as a risk  
13 retention group in this state shall comply with the laws of this  
14 state as follows:

15 (a) Notice of operations and designation of  
16 Commissioner as agent.

17 (i) Before offering insurance in this state, a  
18 risk retention group shall submit to the Commissioner:

19 1. A statement identifying the state or  
20 states in which the risk retention group is chartered and licensed  
21 as a liability insurance company, charter date, its principal  
22 place of business, and such other information, including  
23 information on its membership, as the Commissioner of this state  
24 may require to verify that the risk retention group is qualified  
25 under Section 83-55-3(k);

26 2. A copy of its plan of operations or  
27 feasibility study and revisions of such plan or study submitted to  
28 the state in which the risk retention group is chartered and  
29 licensed; provided, however, that the provision relating to the

30 submission of a plan of operation or feasibility study shall not  
31 apply with respect to any line or classification of liability  
32 insurance which:

33                   a. Was defined in the Product Liability  
34 Risk Retention Act of 1981 before October 27, 1986; and

35                   b. Was offered before such date by any  
36 risk retention group which had been chartered and operating for  
37 not less than three (3) years before such date; and

38                   (ii) The risk retention group shall submit a copy  
39 of any revision to its plan of operation or feasibility study  
40 required by Section 83-55-5(2) at the same time that such revision  
41 is submitted to the Commissioner of its chartering state.

42                   (iii) A statement of registration, for which a  
43 filing fee shall be determined by the Commissioner, which  
44 designates the Commissioner as its agent for the purpose of  
45 receiving service of legal documents or process.

46                   (b) Financial condition. Any risk retention group  
47 doing business in this state shall submit to the Commissioner:

48                   (i) A copy of the group's financial statement  
49 submitted to the state in which the risk retention group is  
50 chartered and licensed which shall be certified by an independent  
51 public accountant and contain a statement of opinion on loss and  
52 loss adjustment expense reserves made by a member of the American  
53 Academy of Actuaries or a qualified loss reserve specialist (under  
54 criteria established by the National Association of Insurance  
55 Commissioners);

56                   (ii) A copy of each examination of the risk  
57 retention group as certified by the Commissioner or public  
58 official conducting the examination;

59                   (iii) Upon request by the Commissioner, a copy of  
60 any information or document pertaining to any outside audit  
61 performed with respect to the risk retention group; and

62 (iv) Such information as may be required to verify  
63 its continuing qualification as a risk retention group under  
64 Section 83-55-3(k).

65 (c) Taxation.

66 (i) Each risk retention group shall be liable for  
67 the payment of premium taxes and taxes on premiums of direct  
68 business for risks resident or located within this state, and  
69 shall report to the Commissioner the net premiums written for  
70 risks resident or located within this state. Such risk retention  
71 group shall be subject to taxation, and any applicable fines and  
72 penalties related thereto, on the same basis as an eligible  
73 nonadmitted insurer.

74 (ii) To the extent licensed agents or brokers are  
75 utilized pursuant to Section 83-55-23, they shall report to the  
76 Commissioner the premiums for direct business for risks resident  
77 or located within this state which such licensees have placed with  
78 or on behalf of a risk retention group not chartered in this  
79 state.

80 (iii) To the extent that insurance agents or  
81 brokers are utilized pursuant to Section 83-55-23, such agent or  
82 broker shall keep a complete and separate record of all policies  
83 procured from each such risk retention group, which record shall  
84 be open to examination by the Commissioner, as provided in Section  
85 83-5-65, Mississippi Code of 1972. These records shall, for each  
86 policy and each kind of insurance provided thereunder, include the  
87 following:

- 88 1. The limit of liability;
- 89 2. The time period covered;
- 90 3. The effective date;
- 91 4. The name of the risk retention group which  
92 issued the policy;
- 93 5. The gross premium charged; and
- 94 6. The amount of return premiums, if any.

95 (d) Deceptive, false or fraudulent practices. Any risk  
96 retention group shall comply with Sections 83-5-29 through  
97 83-5-51, Mississippi Code of 1972, regarding deceptive, false or  
98 fraudulent acts or practices. However, if the Commissioner seeks  
99 an injunction regarding such conduct, the injunction must be  
100 obtained from a court of competent jurisdiction.

101 (e) Examination regarding financial condition. Any  
102 risk retention group must submit to an examination by the  
103 Commissioner to determine its financial condition if the  
104 Commissioner of the jurisdiction in which the group is chartered  
105 and licensed has not initiated an examination or does not initiate  
106 an examination within sixty (60) days after a request by the  
107 Commissioner of this state. Any such examination shall be  
108 coordinated to avoid unjustified repetition and conducted in an  
109 expeditious manner and in accordance with the NAIC's Examiner  
110 Handbook.

111 (f) Notice to Purchasers. Every application form for  
112 insurance from a risk retention group, and every policy (on its  
113 front and declaration pages) issued by a risk retention group,  
114 shall contain in ten-point type the following notice:

115 NOTICE

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

121 (g) Prohibited acts regarding solicitation or sale.  
122 The following acts by a risk retention group are hereby  
123 prohibited:

124 (i) The solicitation or sale of insurance by a  
125 risk retention group to any person who is not eligible for  
126 membership in such group; and

127                   (ii) The solicitation or sale of insurance by, or  
128 operation of, a risk retention group that is in hazardous  
129 financial condition or financially impaired.

130                   (h) Prohibition on ownership by an insurance company.  
131 No risk retention group shall be allowed to do business in this  
132 state if an insurance company is directly or indirectly a member  
133 or owner of such risk retention group, other than in the case of a  
134 risk retention group all of whose members are insurance companies.

135                   (i) Prohibited coverage. The terms of any insurance  
136 policy issued by any risk retention group shall not provide, or be  
137 construed to provide, coverage prohibited generally by statute of  
138 this state or declared unlawful by the highest court of this state  
139 whose law applies to such policy.

140                   (j) Delinquency proceedings. A risk retention group  
141 not chartered in this state and doing business in this state shall  
142 comply with a lawful order issued in a voluntary dissolution  
143 proceeding or in a delinquency proceeding commenced by a State  
144 Insurance Commissioner if there has been a finding of financial  
145 impairment after an examination.

146                   (k) Penalties. A risk retention group that violates  
147 any provision of this chapter will be subject to fines and  
148 penalties including revocation of its right to do business in this  
149 state, applicable to licensed insurers generally.

150                   (l) Operation prior to enactment of this chapter. In  
151 addition to complying with the requirements of this section, any  
152 risk retention group operating in this state prior to enactment of  
153 this chapter shall, within thirty (30) days after the effective  
154 date of this chapter, comply with the provision of paragraph  
155 (a)(i) of this section.

156                   **SECTION 2.** Section 83-55-16, Mississippi Code of 1972, is  
157 amended as follows:

158                   83-55-16. \* \* \*

159       (1) Each risk retention group or risk purchasing group which  
160 wishes to do or continue to do business in this state shall apply  
161 for an annual license on or before March 1 of each year. If a  
162 risk retention group or risk purchasing group fails to timely  
163 renew its license, the commissioner shall immediately revoke  
164 without notice or hearing any registration or license held by the  
165 entity.

166       (2) Each risk retention group or risk purchasing group  
167 operating in the State of Mississippi shall file with the  
168 Mississippi Department of Insurance on or before March 1 of each  
169 year a listing of the premiums written on risks in Mississippi.

170       **SECTION 3.** This act shall take effect and be in force from  
171 and after July 1, 2005.