

110TH CONGRESS
2D SESSION

H. R. 5792

To amend the Liability Risk Retention Act of 1986 to increase insurance competition and available coverage for consumers.

IN THE HOUSE OF REPRESENTATIVES

APRIL 15, 2008

Mr. MOORE of Kansas (for himself, Ms. PRYCE of Ohio, Mr. CAMPBELL of California, and Mr. KLEIN of Florida) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To amend the Liability Risk Retention Act of 1986 to increase insurance competition and available coverage for consumers.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Increasing Insurance
5 Coverage Options for Consumers Act of 2008”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) The establishment of risk retention groups
9 and risk purchasing groups have provided a success-

1 ful model for the sale of insurance across State
2 lines, reducing costs, providing alternative mecha-
3 nisms for coverage to increase competitive options
4 for consumers, and promoting greater premium com-
5 petition among insurers, especially in areas or for
6 risks where coverage is very limited and relatively
7 unaffordable.

8 (2) There have been abuses of the Liability
9 Risk Retention Act of 1986 (15 U.S.C. 3901 et seq.)
10 and increasing concerns by legislators and regulators
11 about the solvency and policyholder control of man-
12 agement in many of the more recently formed risk
13 retention groups.

14 (3) There have also been inappropriate efforts
15 by certain States to regulate, directly or indirectly,
16 risk retention groups or risk purchasing groups in
17 an extra-territorial manner precluded by section 3
18 and 4 of the Liability Risk Retention Act of 1986
19 (15 U.S.C. 3902 and 3903).

20 (4) The Liability Risk Retention Act of 1986
21 should be strengthened by—

22 (A) requiring uniform corporate govern-
23 ance, disclosure, and financial accounting
24 standards;

1 (B) clarifying and strengthening required
2 compliance with certain State consumer protec-
3 tion laws;

4 (C) allowing risk retention groups under
5 the new standards to provide certain commer-
6 cial property insurance coverage;

7 (D) allowing risk purchasing groups to
8 contract more broadly for commercial property
9 coverage as well as coverage for all forms of li-
10 ability insurance; and

11 (E) reinforcing a foundation of the Act
12 that exempts risk retention groups and risk
13 purchasing groups from laws of a State other
14 than their chartering State, except as specifi-
15 cally provided in the Act (15 U.S.C. 3901 et
16 seq.).

17 (5) Fixing and expanding the Liability Risk Re-
18 tention Act of 1986 will reduce solvency exposure
19 and management abuses of risk retention groups
20 while providing more available competitive insurance
21 coverage for consumers.

1 **SEC. 3. EXPANSION OF THE LIABILITY RISK RETENTION**
2 **ACT OF 1986 TO INCLUDE PROPERTY INSUR-**
3 **ANCE.**

4 The Liability Risk Retention Act of 1986 (15 U.S.C.
5 3901 et seq.) is amended—

6 (1) in section 2 (15 U.S.C. 3901)—

7 (A) in subsection (a)—

8 (i) in paragraph (4)—

9 (I) in subparagraph (C)(i) by
10 striking “a liability” and inserting
11 “an”; and

12 (II) in subparagraph (G)(i), by
13 inserting “or commercial property”
14 after “liability”;

15 (ii) in paragraph (5)(A), by inserting
16 “or commercial property” after “liability”;

17 (iii) in paragraph (6), by striking
18 “and” at the end;

19 (iv) in paragraph (7), by striking the
20 final period and inserting “; and”; and

21 (v) by adding at the end the following
22 new paragraph:

23 “(8) ‘commercial property insurance’ means
24 commercial lines of real or personal property insur-
25 ance, including, with regard to excess insurance, in-
26 surance against loss or damage from any and all

1 hazard or cause and against loss consequential upon
2 such loss or damage, including business interruption
3 insurance, other than non-contractual legal liability
4 for such loss or damage.”; and

5 (B) in subsection (b), by inserting “, com-
6 mercial property” after “of liability”;

7 (2) in section 3 (15 U.S.C. 3902)—

8 (A) in subsection (a)(1)(C), by inserting
9 “or commercial property” after “liability”;

10 (B) in subsection (b), by inserting “or
11 commercial property” after “liability” each
12 place it appears; and

13 (C) in subsection (d)(1)(B), by inserting
14 “or commercial property” after “liability”; and

15 (3) in section 6(b) (15 U.S.C. 3905(b)), by in-
16 serting “or commercial property” after “liability”
17 each place it appears.

18 **SEC. 4. EXPANSION OF PURCHASING GROUPS TO INCLUDE**

19 **COMMERCIAL PROPERTY INSURANCE.**

20 Section 4 of the Liability Risk Retention Act of 1986
21 (15 U.S.C. 3903) is amended—

22 (1) in subsection (b)—

23 (A) in paragraph (1), by inserting “or
24 commercial property” after “liability”; and

25 (B) in paragraph (2)—

1 (i) by redesignating subparagraphs
2 (B) and (C) as subparagraphs (C) and
3 (D), respectively; and

4 (ii) by inserting after subparagraph
5 (A) the following new subparagraph:

6 “(B) commercial property insurance;”; and
7 (2) in subsection (d)(1)(B), by inserting “and
8 commercial property” after “liability”.

9 **SEC. 5. CORPORATE GOVERNANCE AND FINANCIAL AC-**
10 **CREDITATION STANDARDS.**

11 (a) **RISK RETENTION GROUP DEFINITION.**—Section
12 2(a) of the Liability Risk Retention Act of 1986 (15
13 U.S.C. 3901(a)) is amended—

14 (1) in paragraph (4)—

15 (A) in subparagraph (C), by striking
16 clauses (i) and (ii) and inserting the following:

17 “(i) is chartered or licensed as an in-
18 surance company and authorized to engage
19 in the business of insurance under the laws
20 of a State with respect to providing liabil-
21 ity or commercial property insurance as a
22 risk retention group; or

23 “(ii) met the definition of a risk re-
24 tention group as defined in this paragraph
25 on the day before the effective date of the

1 Increasing Insurance Coverage Options for
2 Consumers Act of 2007.”;

3 (B) in subparagraph (G)(ii), by striking “;
4 and” and inserting “;”;

5 (C) in subparagraph (H), by striking the
6 period and inserting a semicolon; and

7 (D) by adding at the end the following new
8 subparagraphs:

9 “(I) which—

10 “(i) in the case of a corporation or
11 other limited liability association other
12 than a corporation or association referred
13 to in subparagraph (C)(ii), is licensed or
14 chartered in a State that has adopted cor-
15 porate governance standards that apply to
16 risk retention groups licensed or author-
17 ized by the State that are materially iden-
18 tical to—

19 “(I) the corporate governance
20 standards described in section 8; or

21 “(II) similar standards relating
22 to corporate governance that apply to
23 risk retention groups that a State rea-
24 sonably determines provide at least as
25 much protection as the standards re-

1 ferred to in subclause (I) for the
2 members of such group chartered in
3 the State; and

4 “(ii) in the case of a corporation or
5 other limited liability association referred
6 to in subparagraph (C)(ii), has imple-
7 mented the requirements of the corporate
8 governance standards described in para-
9 graphs (1) through (7) of section 8 or
10 similar standards referred to clause (i)(II);

11 “(J) which, prior to providing coverage for
12 commercial property insurance, is licensed or
13 chartered in a State that has adopted require-
14 ments, as appropriate, for examination author-
15 ity, audits by certified public accountants, ac-
16 counting practices and procedures, filings with
17 the National Association of Insurance Commis-
18 sioners, valuation of investments, safety and li-
19 quidity of investments, liabilities and reserves,
20 actuarial opinions, capital and surplus, correc-
21 tive actions, holding company systems, risk lim-
22 itations, and reinsurance ceded rules; and

23 “(K) which, prior to providing coverage for
24 commercial property insurance, is licensed or
25 chartered in a State that has adopted minimum

1 requirements for safety and soundness, includ-
2 ing requirements that—

3 “(i) prohibit groups from under-
4 writing any single risk exposure, such as
5 wind losses in a coastal region or earth-
6 quake coverage on a single fault, that
7 could unduly impair the group’s capital,
8 similar to such requirements for other in-
9 surance companies or for risk retention
10 groups in other States;

11 “(ii) establish minimum standards for
12 size or sophistication of risk retention
13 group members; and

14 “(iii) establish solvency requirements
15 for risk retention groups.”;

16 (2) in paragraph (6), by striking “; and” and
17 inserting “;”;

18 (3) in paragraph (7), by striking the period and
19 inserting “; and”;

20 (4) by adding at the end the following new
21 paragraph:

22 “(8) ‘materially identical’ means requiring or
23 prohibiting identical conduct with respect to cor-
24 porate governance by risk retention groups, notwith-
25 standing that the standards adopted by a State may

1 differ with respect to conduct required or prohibited
2 with respect to other activities or entities.”.

3 (b) CODIFICATION OF STANDARDS.—The Liability
4 Risk Retention Act of 1986 (15 U.S.C. 3901 et seq.) is
5 amended by adding at the end the following new section:

6 “CORPORATE GOVERNANCE STANDARDS

7 “SEC. 8. Corporate governance standards described
8 in this section are standards that require the following:

9 “(1) INDEPENDENT DIRECTORS.—

10 “(A) IN GENERAL.—The board of directors
11 of the risk retention group shall have a majority
12 of independent directors. If the risk retention
13 group is a reciprocal, then the attorney-in-fact
14 would be required to adhere to the same stand-
15 ards regarding independence of operation and
16 governance as imposed on the risk retention
17 group’s board of directors or subscribers advi-
18 sory committee under these standards and, to
19 the extent permissible under State law, service
20 providers of a reciprocal risk retention group
21 should contract with the risk retention group
22 and not the attorney-in-fact.

23 “(B) INDEPENDENCE.—No director quali-
24 fies as independent unless the board of direc-
25 tors affirmatively determines that the director
26 has no material relationship with the risk reten-

1 tion group. Each risk retention group shall dis-
2 close these determinations to its domestic regu-
3 lator, at least annually. For this purpose—

4 “(i) any person that is a direct or in-
5 direct owner of, or subscriber in, a risk re-
6 tention group defined in section
7 2(a)(4)(E)(ii) is considered to be inde-
8 pendent; and

9 “(ii) any person that is an officer, di-
10 rector, or employee of a person described
11 in clause (i) is considered to be inde-
12 pendent, unless some other position of
13 such officer, director, or employee con-
14 stitutes a material relationship.

15 “(C) MATERIAL RELATIONSHIP.—A mate-
16 rial relationship between a person and a risk re-
17 tention group includes the following:

18 “(i) The receipt in any one 12-month
19 period of compensation or payment of any
20 other item of value by such person, a mem-
21 ber of such person’s immediate family, or
22 any business with which such person is af-
23 filiated from the risk retention group or a
24 consultant or service provider to the risk
25 retention group is greater than or equal to

1 five percent of the risk retention group's
2 gross written premium for such 12-month
3 period or two percent of its surplus, which-
4 ever is greater, as measured at the end of
5 any fiscal quarter falling in such a 12-
6 month period. Such person or immediate
7 family member of such person is not inde-
8 pendent until one year after such person's
9 compensation from the risk retention
10 group falls below the threshold.

11 “(ii) A relationship with an auditor as
12 follows: a director or an immediate family
13 member of a director who is affiliated with
14 or employed in a professional capacity by
15 a present or former internal or external
16 auditor of the risk retention group is not
17 independent until one year after the end of
18 the affiliation, employment, or auditing re-
19 lationship.

20 “(iii) A relationship with a related en-
21 tity as follows: a director or immediate
22 family member of a director who is em-
23 ployed as an executive officer of another
24 company where any of the risk retention
25 group's present executives serve on that

1 risk retention group’s board of directors is
2 not independent until one year after the
3 end of such service or the employment re-
4 lationship.

5 “(2) SERVICE PROVIDER CONTRACTS.—

6 “(A) IN GENERAL.—The term of any ma-
7 terial service provider contract with the risk re-
8 tention group shall not exceed five years. Any
9 such contract, or its renewal, shall require the
10 approval of the majority of the risk retention
11 group’s independent directors. The risk reten-
12 tion group’s board of directors or its insured
13 owners shall have the right to terminate any
14 service provider, audit, or actuarial contracts at
15 any time for cause after providing adequate no-
16 tice as defined in the contract. The service pro-
17 vider contract is deemed material if the amount
18 to be paid for such contract is greater than or
19 equal to five percent of the risk retention
20 group’s annual gross written premium or two
21 percent of its surplus, whichever is greater.

22 “(B) SERVICE PROVIDERS.—For purposes
23 of subparagraph (A), service providers includes
24 captive managers, auditors, accountants, actu-
25 aries, investment advisors, lawyers, managing

1 general underwriters, or other party responsible
2 for underwriting, determination of rates, collec-
3 tion of premium, adjusting and settling claims,
4 or the preparation of financial statements. In
5 this subparagraph, the term ‘lawyer’ does not
6 include defense counsel retained by the risk re-
7 tention group to defend claims, unless the
8 amount of fees paid to such lawyer is greater
9 than or equal to five percent of the risk reten-
10 tion group’s gross written premium for such 12-
11 month period or two percent of its surplus,
12 whichever is greater, as measured at the end of
13 any fiscal quarter falling in such a 12-month
14 period.

15 “(C) PRIOR APPROVAL.—Any contract
16 with a service provider that has a material rela-
17 tionship with the risk retention group shall be
18 submitted for prior approval by the domestic
19 regulator at least 30 days prior to the effective
20 date. No service provider contract involving a
21 material relationship referred to in paragraph
22 (1)(C) shall be entered into unless the risk re-
23 tention group has notified the Commissioner in
24 writing of its intention to enter into such trans-
25 action at least 30 days prior thereto and the

1 Commissioner has not disapproved it within
2 such period.

3 “(3) WRITTEN CHARTER.—The risk retention
4 group’s board of directors shall have a written policy
5 in the Bylaws that requires the board to—

6 “(A) assure that all insured owners of the
7 risk retention group receive evidence of owner-
8 ship interest;

9 “(B) develop a set of governance standards
10 applicable to the risk retention group;

11 “(C) oversee the evaluation of the risk re-
12 tention group’s management;

13 “(D) review and approve all material serv-
14 ice provider contracts;

15 “(E) approve the compensation for all
16 service providers; and

17 “(F) review and approve, at least annu-
18 ally—

19 “(i) the risk retention group’s goals
20 and objectives relevant to the compensation
21 of officers and service providers;

22 “(ii) the officers’ and service pro-
23 viders’ performance in light of those goals
24 and objectives; and

1 “(iii) the continued engagement of the
2 officers and material service providers.

3 “(4) AUDIT COMMITTEE.—

4 “(A) IN GENERAL.—The risk retention
5 group shall have an audit committee composed
6 of at least three independent board members as
7 described in paragraph (1). A non-independent
8 board member may participate in the activities
9 of the audit committee, if invited by the mem-
10 bers, but cannot be a member of such com-
11 mittee.

12 “(B) WRITTEN CHARTER.—The audit
13 committee shall have a written charter that de-
14 fines the committee’s purpose, which, at a min-
15 imum, must be to—

16 “(i) assist board oversight of (1) the
17 integrity of the financial statements, (2)
18 the compliance with legal and regulatory
19 requirements, (3) the qualifications, inde-
20 pendence, and performance of the inde-
21 pendent auditor and actuary, and (4) the
22 performance of the captive manager, man-
23 aging general underwriter, or other party
24 or parties responsible for underwriting, de-
25 termination of rates, collection of premium,

1 adjusting or settling claims or the prepara-
2 tion of financial statements;

3 “(ii) discuss the annual audited finan-
4 cial statements and quarterly financial
5 statements with management;

6 “(iii) discuss the annual audited fi-
7 nancial statements with its independent
8 auditor and, if advisable, discuss its quar-
9 terly financial statements with its inde-
10 pendent auditor;

11 “(iv) discuss policies with respect to
12 risk assessment and risk management;

13 “(v) meet separately and periodically,
14 either directly or through a designated rep-
15 resentative of the committee, with manage-
16 ment and independent auditors;

17 “(vi) review with the independent
18 auditor any audit problems or difficulties
19 and management’s response;

20 “(vii) set clear hiring policies of the
21 risk retention group for employees or
22 former employees of the independent audi-
23 tor;

24 “(viii) require the external auditor to
25 rotate the lead (or coordinating) audit

1 partner having primary responsibility for
2 the risk retention group’s audit and the
3 audit partner responsible for reviewing
4 that audit so that neither individual per-
5 forms audit services for more than five
6 consecutive fiscal years; and

7 “(ix) report regularly to the board of
8 directors.

9 “(C) WAIVER.—The domestic regulator
10 may waive the requirement to establish an audit
11 committee composed of independent directors if
12 the risk retention group is able to demonstrate
13 to the domestic regulator that it is impracti-
14 cable to do so and the risk retention group’s
15 board of directors itself is otherwise able to ac-
16 complish the purposes of an audit committee, as
17 described in subparagraph (B).

18 “(5) GOVERNANCE STANDARDS.—The risk re-
19 tention group shall adopt and disclose governance
20 standards that include—

21 “(A) a process by which the directors are
22 elected by the insured owners;

23 “(B) director qualification standards;

24 “(C) director responsibilities;

1 “(D) director access to management and,
2 as necessary and appropriate, independent advi-
3 sors;

4 “(E) director compensation;

5 “(F) director orientation and continuing
6 education;

7 “(G) management succession; and

8 “(H) annual performance evaluation of the
9 board.

10 “(6) BUSINESS CONDUCT AND ETHICS.—The
11 risk retention group shall adopt and disclose a code
12 of business conduct and ethics for directors, officers,
13 and employees and promptly disclose to the board of
14 directors any waivers of the code for directors or ex-
15 ecutive officers, which shall include—

16 “(A) conflicts of interest;

17 “(B) corporate opportunities;

18 “(C) confidentiality;

19 “(D) fair dealing;

20 “(E) protection and proper use of risk re-
21 tention group assets;

22 “(F) compliance with all applicable laws,
23 rules, and regulations; and

1 “(G) requiring the reporting of any illegal
2 or unethical behavior that affects the operation
3 of the risk retention group.

4 “(7) REPORTING NON-COMPLIANCE.—The cap-
5 tive manager or chief executive officer of the risk re-
6 tention group shall promptly notify the domestic reg-
7 ulator in writing if either becomes aware of any ma-
8 terial non-compliance with any of the risk retention
9 group’s governance standards.

10 “(8) ENFORCEMENT.—The risk retention
11 group’s domestic regulator may take appropriate
12 regulatory action against any director or officer of
13 the risk retention group or its captive manager pur-
14 suant to its laws and regulations if the risk retention
15 group or captive manager violates these governance
16 standards.”.

17 **SEC. 6. NO PARTICIPATION IN STATE GUARANTY FUNDS.**

18 Section 3 of the Liability Risk Retention Act of 1986
19 (15 U.S.C. 3902) is amended by adding at the end the
20 following new subsection:

21 “(i) Notwithstanding any other provision of this sec-
22 tion, a risk retention group may not participate in an in-
23 surance insolvency guaranty association that includes par-
24 ticipants other than risk retention groups.”.

1 **SEC. 7. FINANCIAL STATEMENTS.**

2 Section 3 of the Liability Risk Retention Act of 1986
3 (15 U.S.C. 3902) is further amended in subsection
4 (d)(3)—

5 (1) by redesignating subparagraphs (A) and
6 (B) as clauses (i) and (ii), respectively, and moving
7 the margins two ems to the right;

8 (2) by striking “which statement shall be cer-
9 tified” and inserting “which statement shall—

10 “(A) be certified”;

11 (3) in subparagraph (A)(2) (as designated by
12 paragraphs (1) and (2)), by striking the period and
13 inserting a semicolon; and

14 (4) by adding at the end the following new sub-
15 paragraphs:

16 “(B) be filed not later than the earlier
17 of—

18 “(i) June 1, for the preceding cal-
19 endar year; and

20 “(ii) such time as the State in which
21 the risk retention group is chartered re-
22 quires; and

23 “(C) if not prepared in conformity with
24 statutory accounting principles, include appro-
25 priate notes for conversion of such statement to
26 statutory accounting principles.”.

1 **SEC. 8. DISCLOSURE REQUIREMENTS.**

2 Section 3 of the Liability Risk Retention Act of 1986
3 (15 U.S.C. 3902) is further amended—

4 (1) in subsection (a)(1)—

5 (A) in subparagraph (G), by striking “ju-
6 risdiction;” and inserting “jurisdiction; and”;

7 (B) in subparagraph (H), by striking “im-
8 paired; and” and inserting “impaired.”; and

9 (C) by striking subparagraph (I); and

10 (2) by adding at the end the following new sub-
11 section:

12 “(j) Each risk retention group shall provide to each
13 member of such group, on the front page and the declara-
14 tion page of each insurance policy issued by such group,
15 in bold 12-point or larger type, the following notice: ‘This
16 policy is issued by your risk retention group of which you
17 are a part owner. Your risk retention group is primarily
18 regulated under the laws of _____ and may not be sub-
19 ject to all of the insurance laws and consumer protections
20 of your State. If your risk retention group fails, it may
21 not be protected by a State insurance insolvency guaranty
22 fund.’. The risk retention group shall insert the name of
23 the State in which the risk retention group is chartered
24 or licensed in place of the blank space.’”.

1 **SEC. 9. FIDUCIARY DUTY.**

2 Section 3 of the Liability Risk Retention Act of 1986
3 (15 U.S.C. 3902) is further amended by adding at the
4 end the following new subsection:

5 “(k) The board of directors of a risk retention group
6 shall have a fiduciary duty to operate in the best interests
7 of the group.”.

8 **SEC. 10. UNDERSCORING THE EXEMPTION.**

9 The Liability Risk Retention Act of 1986 (15 U.S.C.
10 3901 et seq.) is amended—

11 (1) in section 3 (15 U.S.C. 3902)—

12 (A) in subsection (a), by striking “Except
13 as provided” and inserting “Except as specifi-
14 cally provided”; and

15 (B) in subsection (f)(1)—

16 (i) by inserting “or purchasing group”
17 after “risk retention group”; and

18 (ii) by inserting before the period “,
19 except that a State may not issue a cease-
20 and-desist order to any risk retention
21 group or purchasing group not chartered
22 or licensed in such State, or otherwise at-
23 tempt to regulate such group directly or
24 indirectly, except as specifically permitted
25 under this Act.”; and

1 (2) in section 4(a) (15 U.S.C. 3903(a)), by
2 striking “Except as provided” and inserting “Except
3 as specifically provided”.

4 **SEC. 11. TECHNICAL CORRECTION AND AMENDMENT TO**
5 **SHORT TITLE.**

6 (a) **TECHNICAL CORRECTION.**—Section 3(a)(1) of
7 the Liability Risk Retention Act of 1986 (15 U.S.C.
8 3902(a)(1)) is amended by striking “many” and inserting
9 “any”.

10 (b) **SHORT TITLE.**—Section 1 of the Liability Risk
11 Retention Act of 1986 (15 U.S.C. 3901 note) is amended
12 by striking “Liability Risk Retention Act” and inserting
13 “Risk Retention Act”.

14 **SEC. 12. DELAYED EFFECTIVE DATE.**

15 (a) **IN GENERAL.**—Subject to subsection (b), this Act
16 and the amendments made by this Act shall take effect
17 on the date of the enactment of this Act.

18 (b) **EXCEPTION.**—Notwithstanding subsection (a),
19 sections 3 (except clauses (iii) through (v) of paragraph
20 (1)(A) of section 3), 5, 7, 8, and 9 shall take effect on
21 the date that is 18 months after the date of the enactment
22 of this Act.

○