

AN ACT concerning insurance.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

Section 5. The Illinois Income Tax Act is amended by changing Section 205 as follows:

(35 ILCS 5/205) (from Ch. 120, par. 2-205)

Sec. 205. Exempt organizations.

(a) Charitable, etc. organizations. The base income of an organization which is exempt from the federal income tax by reason of Section 501(a) of the Internal Revenue Code shall not be determined under section 203 of this Act, but shall be its unrelated business taxable income as determined under section 512 of the Internal Revenue Code, without any deduction for the tax imposed by this Act. The standard exemption provided by section 204 of this Act shall not be allowed in determining the net income of an organization to which this subsection applies.

(b) Partnerships. A partnership as such shall not be subject to the tax imposed by subsection 201 (a) and (b) of this Act, but shall be subject to the replacement tax imposed by subsection 201 (c) and (d) of this Act and shall compute its base income as described in subsection (d) of Section 203 of this Act. A partnership shall file such returns and other information at such time and in such manner as may be required under Article 5 of this Act. The partners in a partnership shall be liable for the replacement tax imposed by subsection 201 (c) and (d) of this Act on such partnership, to the extent such tax is not paid by the partnership, as provided under the laws of Illinois governing the liability of partners for the obligations of a partnership. Persons carrying on business as partners shall be liable for the tax imposed by subsection 201 (a) and (b) of this Act only in their separate or individual capacities.

(c) Subchapter S corporations. A Subchapter S corporation shall not be subject to the tax imposed by subsection 201 (a) and (b) of this Act but shall be subject to the replacement tax imposed by subsection 201 (c) and (d) of this Act and shall file such returns and other information at such time and in such manner as may be required under Article 5 of this Act.

(d) Combat zone death. An individual relieved from the federal income tax for any taxable year by reason of section 692 of the Internal Revenue Code shall not be subject to the tax imposed by this Act for such taxable year.

(e) Certain trusts. A common trust fund described in Section 584 of the Internal Revenue Code, and any other trust to the extent that the grantor is treated as the owner thereof under sections 671 through 678 of the Internal Revenue Code shall not be subject to the tax imposed by this Act.

(f) Certain business activities. A person not otherwise subject to the tax imposed by this Act shall not become subject to the tax imposed by this Act by reason of:

(1) that person's ownership of tangible personal property located at the premises of a printer in this State with which the person has contracted for printing, or

(2) activities of the person's employees or agents located solely at the premises of a printer and related to quality control, distribution, or printing services performed by a printer in the State with which the person has contracted for printing.

(g) A nonprofit risk organization that holds a certificate of authority under Article VIID of the Illinois Insurance Code is exempt from the tax imposed under this Act with respect to its activities or operations in furtherance of the powers conferred upon it under that Article VIID of the Illinois Insurance Code.

(Source: P.A. 88-361.)

Section 10. The Illinois Insurance Code is amended by adding Article VIID as follows:

(215 ILCS 5/Art. VIID heading new)

ARTICLE VIID. NONPROFIT RISK ORGANIZATIONS

(215 ILCS 5/123D-1 new)

Sec. 123D-1. Purpose; construction. The purpose of this Article is to provide for the organization of and issuance of a certificate of authority to nonprofit risk organizations that insure nonprofit organizations and that will qualify, and continue to qualify, as a qualified charitable risk pool, as defined in subsection (n) of Section 501 of the Internal Revenue Code.

(215 ILCS 5/123D-5 new)

Sec. 123D-5. Definitions. As used in this Article:

"Member" means a nonprofit organization that participates as an insured in a nonprofit risk organization.

"Nonmember charitable organization" has the meaning set forth in subsection (n) of Section 501 of the Internal Revenue Code.

"Nonprofit organizations" means organizations described in paragraph (3) of subsection (c), and exempt from taxation under subsection (a), of Section 501 of the Internal Revenue Code.

"Nonprofit risk organization" means a nonprofit company organized to do business solely with nonprofit organizations as a qualified charitable risk pool under subsection (n) of Section 501 of the Internal Revenue Code that is organized in accordance with this Article.

"Startup capital" has the meaning set forth in subsection (n) of Section 501 of the Internal Revenue Code.

(215 ILCS 5/123D-10 new)

Sec. 123D-10. Organization of nonprofit risk organizations.

(a) A company organized pursuant to Articles III or IV, including such companies organized as a risk retention group in

this State pursuant to Article VIIB of this Code, that satisfies the requirements of this Article may be organized as a nonprofit risk organization.

(b) Notwithstanding any contrary provision in subsection A of Section 123B-3 of this Code, a nonprofit risk organization may be organized as a reciprocal insurance company and qualify for organization under Article VIIB as a risk retention group.

(c) No nonprofit risk organization issued a certificate of authority pursuant to this Article shall be converted into a corporation or other entity organized for pecuniary profit or into a for-profit organization of any kind.

(215 ILCS 5/123D-15 new)

Sec. 123D-15. Conduct of insurance business by nonprofit risk organizations.

(a) The Director may, pursuant to this Article, issue a certificate of authority to write the kinds of insurance enumerated in Classes 2 and 3 of Section 4 to a nonprofit risk organization that is a company organized pursuant to Articles III or IV, including such companies organized as a risk retention group in this State pursuant to Article VIIB, if such organization:

(1) complies with the applicable requirements of Articles III or IV and VIIB, if organized as a risk retention group; and

(2) has an initial paid-up capital and surplus at least equal to the amount of applicable paid-up capital and surplus required by Articles III or IV for a newly organized company doing the same kind or kinds of insurance business.

Thereafter, every such nonprofit risk organization shall maintain capital and surplus at least equal to the amount of applicable capital and surplus required to be maintained by companies under Articles III or IV doing the same kind or kinds of insurance business.

(b) Every certificate of authority to engage in an

insurance business issued by the Director to any nonprofit risk organization pursuant to the provisions of this Article shall specify the company's name, the location of its principal office, the name and principal address of its attorney-in-fact, if any, and the kind or kinds of insurance business that it is authorized to engage in this State.

(215 ILCS 5/123D-20 new)

Sec. 123D-20. Relevant criteria.

(a) A nonprofit risk organization must meet all of the following criteria:

(1) Be organized and operated solely to insure risks of its members.

(2) Directly provide information to its members with respect to loss control and risk management.

(3) Be comprised solely of members.

(4) Be organized under this Article.

(5) Be exempt from Illinois income taxes with respect to its activities or operations in furtherance of the powers conferred upon it by this Article.

(6) Obtain at least \$1,000,000 in startup capital from nonmember charitable organizations. The startup capital may take the form of advancements or borrowings in the form permitted by Section 56 or 76 of this Code, as applicable. Startup capital may be used to satisfy the financial requirements contained in this Article applicable to a nonprofit risk organization only to the extent the Director determines that it complies with those requirements.

(7) Be controlled by a board of directors elected by its members.

(8) Require in its organizational documents that:

(A) each member of the nonprofit risk organization shall at all times be an organization described in paragraph (3) of subsection (c) of Section 501 of the Internal Revenue Code and exempt from tax under subsection (a) of Section 501 of the Internal Revenue

Code;

(B) any member that receives a final determination that it no longer qualifies as an organization described in paragraph (3) of subsection (c) of Section 501 of the Internal Revenue Code shall immediately notify the nonprofit risk organization of the determination and the effective date of the determination; and

(C) each policy of insurance issued by the nonprofit risk organization shall provide that the policy does not cover the insured with respect to events occurring after the date the final determination was issued to the insured.

(b) An organization shall not cease to qualify as a nonprofit risk organization solely by reason of the failure of any of its members to continue to be an organization described in paragraph (3) of subsection (c) of Section 501 of the Internal Revenue Code if, within a reasonable period of time after the nonprofit risk organization is notified as required under subparagraph (8)(B) of subsection (a) of this Section, the nonprofit risk organization takes such action as may be reasonably necessary to remove the member from the nonprofit risk organization.

(215 ILCS 5/123D-25 new)

Sec. 123D-25. Applicability of other provisions of this Code. Except as otherwise provided in this Article, where inconsistent with this Article, or where the context otherwise requires, all of the provisions of this Code and the rules of the Director relating to all insurers and those relating to a company organized pursuant to Articles III or IV or a risk retention group organized in this State pursuant to Article VIIB transacting the same kind or kinds of insurance shall be applicable to a nonprofit risk organization organized and issued a certificate of authority pursuant to this Article. Where any of such provisions of law refer to a corporation,

company, or insurer, those references, when read in connection with and applicable to this Article, shall mean such a nonprofit risk organization.

(215 ILCS 5/123D-30 new)

Sec. 123D-30. Residual market participation exemption; security funds. A nonprofit risk organization shall not be permitted or required to join or contribute financially to any plan, pool, association, or guaranty or insolvency fund in this State, nor shall any nonprofit risk organization, nor its insureds nor any claimants against the insureds, nor its parent nor any affiliated company, nor any member organization of its association, receive any benefit from any such plan, pool association, or guaranty or insolvency fund for claims arising out of the operations of the nonprofit risk organization. Each nonprofit risk organization must inform each insured, in both the application for insurance and in the policy issued to the insured, that (i) the nonprofit risk organization is not subject to all of the insurance laws and rules of this State, and (ii) State insurance insolvency guaranty funds are not available to the insured for claims arising out of the operations of the nonprofit risk organization.

(215 ILCS 5/123D-35 new)

Sec. 123D-35. Rules. The Director shall adopt such rules as may be necessary for the implementation of this Article.