

# MAINE STATE LEGISLATURE

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1 SECOND REGULAR SESSION  
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE  
4

5 Legislative Document

No. 1749

6 S.P. 676

In Senate, December 27, 1985

7 Submitted by the Department of Business, Occupational and Professional  
8 Regulation pursuant to Joint Rule 24.

9 Received by the Secretary of the Senate on December 27, 1985. Referred  
10 to the Committee on Business and Commerce and 1,600 ordered printed  
pursuant to Joint Rule 14.

Presented by Senator Bustin of Kennebec.  
JOY J. O'BRIEN, Secretary of the Senate

11 Cosponsored by Representative Rydell of Brunswick, Representative  
Armstrong of Wilton and Senator Sewell of Lincoln.

12 STATE OF MAINE  
13

14 IN THE YEAR OF OUR LORD  
15 NINETEEN HUNDRED AND EIGHTY-SIX  
16

17 AN ACT Pertaining to Product Liability Risk  
18 Retention Groups.  
19

20 Be it enacted by the People of the State of Maine as  
21 follows:

22 Sec. 1. 24-A MRSA §427, sub-§5, as amended by PL  
23 1969, c. 177, §11, is further amended to read:

24 5. Bid bonds issued in connection with any pub-  
25 lic or private contract; ~~ex~~

26 Sec. 2. 24-A MRSA §427, sub-§6, as enacted by PL  
27 1969, c. 132, §1, is amended to read:

28 6. Group insurance of a type permitted by this  
29 Title issued to a nonresident policyholder, and any  
30 insurance certificate applicable to it; ;

31 Sec. 3. 24-A MRSA §427, sub-§7, as amended by PL  
32 1979, §162, is further amended to read:

1           7. Automobile assigned risk policies which are  
2 required by section 2325 and any endorsements appli-  
3 cable to them: ; or

4           Sec. 4. 24-A MRSA §427, sub-§8 is enacted to  
5 read:

6           8. Product liability or completed operations li-  
7 ability coverage as defined in chapter 69 issued to a  
8 risk retention group or any member of that group.

9           Sec. 5. 24-A MRSA c. 69 is enacted to read:

10   CHAPTER 69

11                                   MAINE PRODUCT LIABILITY RISK RETENTION ACT

12           §6001. Short title

13                   This chapter shall be known as the "Maine Product  
14 Liability Risk Retention Act."

15           §6002. Definitions

16                   As used in this Act, unless the context indicates  
17 otherwise, the following terms have the following  
18 meanings.

19                   1. "Commissioner" means the commissioner, direc-  
20 tor or superintendent of insurance in any state other  
21 than Maine.

22                   2. "Completed operations liability" means lia-  
23 bility arising out of the installation, maintenance  
24 or repair of any product at a site which is not owned  
25 or controlled by:

26                   A. Any person who performs that work; or

27                   B. Any person who hires an independent contrac-  
28 tor to perform that work.

29                   "Completed operations liability" does not include li-  
30 ability for activities which are completed or aban-  
31 doned before the date of the occurrence giving rise  
32 to the liability.

1           3. "Insurance" means primary insurance, excess  
2 insurance, reinsurance, surplus lines insurance and  
3 any other arrangement for shifting and distributing  
4 risk which is determined to be insurance under the  
5 laws of this State.

6           4. "Product liability" means liability for dam-  
7 ages because of any personal injury, death, emotional  
8 harm, consequential economics damage or property dam-  
9 age, including damages resulting from the loss of use  
10 of property, arising out of the manufacture, design  
11 importation, distribution, packaging, labeling, lease  
12 or sale of a product, but does not include the lia-  
13 bility of any person for those damages if the product  
14 involved was in the possession of such a person when  
15 the incident giving rise to the claim occurred.

16           5. "Risk retention group" means any corporation  
17 or other limited liability association taxable as a  
18 corporation or as an insurance company formed pursu-  
19 ant to this Act:

20           A. Which is organized for the primary purpose of  
21 assuming and spreading the product liability or  
22 completed operations liability risk exposure of  
23 its members;

24           B. Whose primary activity consists of assuming  
25 and spreading all, or any portion, of the product  
26 liability or completed operations liability risk  
27 exposure of its groups members; and

28           C. Which is composed of members each of whose  
29 principal activity consists of the manufacture,  
30 design, importation, distribution, packaging, la-  
31 beling, lease or sale of a product or products.

32           6. "Service providers" means any person provid-  
33 ing insurance related services or management services  
34 to, or for, a risk retention group, including, but  
35 not limited to, agents, brokers, claims appraisers  
36 and adjusters, insurers, actuaries and financial man-  
37 agement consultants.

38           7. "State" means the State of Maine and "state"  
39 means any state of the United States and the District  
40 of Columbia.

1           8. "Superintendent" means the Superintendent of  
2 Insurance of this State.

3 §6003. Risk retention groups organized in this State

4           A risk retention group seeking to be organized in  
5 this State must be domiciled and licensed as an in-  
6 urance company authorized by the insurance laws of  
7 this State and, except as provided elsewhere in this  
8 Act, must comply with all of the laws, rules and re-  
9 quirements applicable to those insurers, domiciled  
10 and licensed in this State.

11 §6004. Risk retention groups not chartered in this  
12 State

13           1. Any risk retention group organized in Bermuda  
14 or the Cayman Islands or states other than this State  
15 and seeking to do business as a risk retention group  
16 in this State must:

17           A. Register with the Superintendent of Insurance  
18 of this State;

19           B. Designate the superintendent as its agent for  
20 service of process and receipt of legal documents  
21 in accordance with sections 421 and 422;

22           C. File with the superintendent its annual  
23 statement as filed with the commissioner in the  
24 domiciliary state or the public official having  
25 supervision of insurance in that jurisdiction  
26 where the group has been formed, and is required  
27 to submit an annual statement in substantially  
28 that form and content as required of insurer li-  
29 icensed in this State pursuant to section 423;

30           D. File a copy of the last examination, if any,  
31 made of the risk retention group, certified by  
32 the commissioner of the domiciliary state or the  
33 public official having supervision of insurance  
34 in the domiciliary jurisdiction; and

35           E. File with the superintendent no later than  
36 May 1st the product liability loss experience da-  
37 ta report required as an addendum to the annual  
38 statement.

1           2. Risk retention groups chartered in Bermuda or  
2 the Cayman Islands, in addition to the requirements  
3 of subsection 1, must:

4           A. Be chartered or licensed and authorized to do  
5 business under the laws of Bermuda or the Cayman  
6 Islands before January 1, 1985;

7           B. File with the Superintendent of Insurance of  
8 this State a copy of the certification filed with  
9 the commissioner of at least one state that sat-  
10 isfied the capitalization requirements of that  
11 state, together with evidence that such certifi-  
12 cation has been accepted by the commissioner of  
13 that state as meeting the requirements of that  
14 state; and

15           C. File with the superintendent of the state in  
16 which it certifies its capitalization a waiver of  
17 any secrecy laws of the jurisdiction in which it  
18 is chartered.

19       §6005. Agents and brokers

20           1. The following provisions apply to agents and  
21 brokers.

22           A. Any person who is a resident of this State,  
23 acting or offering to act as an agent or broker  
24 for a risk retention group, whose activities in-  
25 clude, but are not limited to, the solicitation,  
26 negotiation and placement of insurance on behalf  
27 of a risk retention group operating in this  
28 State, or any of its members in this State, must  
29 obtain a license as an agent or broker in accord-  
30 ance with chapter 17.

31           B. An agent or broker duly licensed by another  
32 state and residing outside of this State may act  
33 as an agent or broker for a risk retention group  
34 operating in this State or any of its members in  
35 this State in the same manner as a resident agent  
36 or broker, upon obtaining a license in accordance  
37 with chapter 17.

38           C. Any agent or broker licensed in accordance  
39 with paragraph A or B, in addition must report to

1           the superintendent the activities and scope of  
2           services the agent or broker is providing to the  
3           risk retention group.

4           2. Before placing business with a risk retention  
5           group, each agent or broker shall secure from the ap-  
6           propriate insurance regulatory authority a certified  
7           copy of the certificate of authority verifying that  
8           the insurer is authorized in its domiciliary juris-  
9           isdiction to write the product liability or completed  
10           operations insurance policy proposed to be procured  
11           from it by the agent or broker.

12           3. Each agent or broker shall assure that every  
13           policy or contract of insurance placed by an agent or  
14           broker with a risk retention group chartered or li-  
15           icensed in this State shall bear across its face in  
16           not less than 10 point bold red type the following  
17           legend:

18           "THE INSURANCE HEREBY EVIDENCED IS WRITTEN BY A RISK  
19           RETENTION GROUP LICENSED BY THE STATE OF MAINE, BUT,  
20           IN THE EVENT OF INSOLVENCY OF THIS RISK RETENTION  
21           GROUP, IS NOT PROTECTED BY THE MAINE INSURANCE GUAR-  
22           ANTY ASSOCIATION."

23           4. Each agent or broker shall assure that every  
24           policy or contract of insurance placed by an agent or  
25           broker with a risk retention group not chartered or  
26           licensed in this State shall bear across its face in  
27           not less than 10 point bold red type the following  
28           legend:

29           "THE INSURANCE HEREBY EVIDENCED IS WRITTEN BY A RISK  
30           RETENTION GROUP NOT LICENSED BY THE STATE OF MAINE,  
31           NOT SUBJECT TO ITS SUPERVISION AND NOT PROTECTED, IN  
32           THE EVENT OF THE INSOLVENCY OF THIS RISK RETENTION  
33           GROUP, BY THE MAINE INSURANCE GUARANTY ASSOCIATION."

34           §6006. Taxes

35           1. All risk retention groups shall be subject to  
36           taxation and shall be deemed to be insurers for the  
37           purpose of assessing and collecting taxes in accord-  
38           ance with chapter 7 and subject to the same interest,  
39           finances and penalties for nonpayment.

1           2. Agents and brokers shall report and pay the  
2 taxes upon the premiums for risks which they have  
3 placed with or on behalf of a risk retention group  
4 not chartered in this State.

5           §6007. Restrictions

6           A risk retention group may not:

7           1. Insure any risks other than those of its mem-  
8 ber companies;

9           2. Provide any insurance or insurance related  
10 services other than for product liability or com-  
11 pleted operations unless it obtains a license in this  
12 State and becomes subject to all laws and regulations  
13 of this State with respect to those additional lines  
14 of insurance and related services; or

15           3. Exclude any person from membership in the  
16 group solely to provide for members of such a group a  
17 competitive advantage over such a person.

18           §6008. Exemption from compulsory associations

19           No risk retention group, with respect to its  
20 product liability or completed operations insurance,  
21 may join or contribute financially to any insurance  
22 insolvency guaranty fund, or similar mechanism, in  
23 this State, nor may any risk retention group, or its  
24 insureds, receive any benefit from any such fund for  
25 claims arising out of the operations of that risk re-  
26 retention group for product liability or completed op-  
27 erations insurance.

28           §6009. Examination for financial impairment

29           1. A risk retention group domiciled in this  
30 State must submit to examinations to determine its  
31 financial condition as deemed necessary by the super-  
32 intendent.

33           2. A risk retention group not domiciled in this  
34 State and doing business in this State must submit to  
35 an examination if:



1 A. The superintendent has reason to believe the  
2 risk retention group is in financially impaired  
3 condition; and

4 B. The commissioner of the state or the public  
5 official having supervision over insurance in the  
6 jurisdiction in which the group is domiciled has  
7 not begun or has refused to initiate an examina-  
8 tion of the group.

9 For purposes of paragraph A, financial statements re-  
10 lating to a risk retention group prepared by quali-  
11 fied independent public accountants wherein an opin-  
12 ion is expressed by those accountants that the equity  
13 funds of the group are not at least equal to the  
14 paid-up capital or basic surplus funds of the group  
15 shall constitute prima facie evidence of financial  
16 impairment.

17 3. The examination shall be conducted in accord-  
18 ance with laws, rules and procedures applicable to  
19 insurers licensed in this State.

20 4. To the extent that the results of findings  
21 obtained from any examination conducted pursuant to  
22 this section disclose the risk retention group is  
23 possessed of capital funds in an amount less than  
24 those which would be required by the state of domi-  
25 cile or, in the case of risk retention groups  
26 chartered in Bermuda or the Cayman Islands, by the  
27 state where the certification required by section  
28 6002, subsection 2, paragraph B, has been filed, of a  
29 domestic casualty insurer writing such lines of busi-  
30 ness, that group shall be deemed an impaired insurer.

31 §6010. Delinquency proceedings

32 1. A risk retention group domiciled and licensed  
33 in this State must comply with all lawful orders is-  
34 sued in a delinquency proceeding commenced by the su-  
35 perintendent.

36 2. A risk retention group not domiciled in this  
37 State and doing business in this State must comply  
38 with a lawful order issued in a delinquency proceed-  
39 ing commenced by the superintendent if the commis-  
40 sioner of the state or the public official having su-

1 pervision over insurance in the jurisdiction in which  
2 the group is domiciled has failed to initiate such a  
3 proceeding after notice of a finding of financial im-  
4 pairment under section 6009.

5 §6011. Penalties

6 1. A risk retention group which is domiciled and  
7 licensed under sections 6003 and 6004 and which vio-  
8 lates any provision of this chapter shall be subject  
9 to fines and penalties applicable to licensed insur-  
10 ers generally, including revocation of its license  
11 and the right to do business in this State.

12 2. A risk retention group doing business in this  
13 State and which is not domiciled or licensed in ac-  
14 cordance with either section 6003 or 6004 is an unau-  
15 thorized insurer and subject to the fines and penal-  
16 ties of the Maine Insurance Code relating to unautho-  
17 rized insurers.

18 §6012. Rules

19 The superintendent may establish, and from time  
20 to time amend, such rules relating to risk retention  
21 groups as are necessary to carry out the provisions  
22 of this chapter.

23 STATEMENT OF FACT

24 This bill provides for a program to regulate the  
25 function and operation of product liability risk re-  
26 tention groups in this State formed pursuant to the  
27 United States Product Liability Risk Retention Act of  
28 1981, Public Law 97-45, to the extent provided for  
29 under federal law.

30 5407121685