

MAINE STATE LEGISLATURE

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1 SECOND REGULAR SESSION
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE
4

5 Legislative Document

No. 2199

6
7 H.P. 1560

House of Representatives, March 17, 1986

8 Approved for introduction by a majority of the Legislative Council
pursuant to Joint Rule 26.

9 Reference to the Committee on Business and Commerce suggested and
ordered printed.

EDWIN H. PERT, Clerk

10 Presented by Speaker Martin of Eagle Lake.

11
12 STATE OF MAINE
13

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

17 AN ACT to Establish the Maine Workers'
18 Compensation Reinsurance Association.
19

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

22 39 MRSA c. 2 is enacted to read:

23 CHAPTER 2

24 WORKERS' COMPENSATION REINSURANCE ASSOCIATION

25 §121. Creation of Workers' Compensation Reinsurance
26 Association

27 1. Association established. A nonprofit associ-
28 ation known as the "Workers' Compensation Reinsurance
29 Association" is created, which may be incorporated
30 with all the powers of a corporation formed under Ti-
31 tle 13. Each insurer authorized to issue workers'
32 compensation insurance policies shall be a member of
33 the reinsurance association and shall be bound by the

1 plan of operation of the reinsurance association;
2 provided that all affiliated insurers within a hold-
3 ing company system shall be considered a single enti-
4 ty for purposes of the exercise of all rights and du-
5 ties of membership in the reinsurance association.
6 Each self-insurer and each political subdivision
7 which self-insures shall, as a condition of its au-
8 thority to self-insure workers' compensation liabili-
9 ty in this State, be a member of the reinsurance as-
10 sociation and shall be bound by its plan of opera-
11 tion; provided that all affiliated companies within a
12 holding company system, as determined by the Superin-
13 tendent of Insurance shall be considered a single en-
14 tity for purposes of the exercise of all rights and
15 duties of membership in the reinsurance association
16 and all group self-insurers shall be considered a
17 single entity for purposes of the exercise of all the
18 rights and duties of membership in the reinsurance
19 association. As a condition of its authority to
20 self-insure workers' compensation liability and for
21 losses incurred on or after August 1, 1986, the State
22 shall be a member of the reinsurance association and
23 is bound by its plan of operation. The Commissioner
24 of Personnel shall represent the State in the exer-
25 cise of all the rights and duties of membership in
26 the reinsurance association. The Treasurer of State
27 shall pay the premium to the reinsurance association
28 upon the direction of the Commissioner of Personnel.
29 A department or agency may be charged the portion of
30 premiums paid to the reinsurance association for em-
31 ployees who are paid wholly or in part by federal
32 funds, dedicated funds or special revenue funds. The
33 reinsurance association is not a state agency. The
34 reinsurance association is exempt from taxation under
35 the laws of this State and all property owned by the
36 association is exempt from taxation.

37 2. Indemnification. The reinsurance association
38 shall provide and each member shall accept indemnifi-
39 cation for 100% of the amount of ultimate loss sus-
40 tained in each loss occurrence relating to one or
41 more claims arising out of a single compensable
42 event, including aggregate losses related to a single
43 event or occurrence which constitutes a single loss
44 occurrence, in excess of \$300,000 or \$100,000 reten-
45 tion limit, at the option of the member. In case of
46 occupational disease causing disablement, each person

1 suffering disablement due to occupational disease is
2 considered to be involved in a separate loss occur-
3 rence. The lower retention limit shall be increased
4 to the nearest \$10,000 on January 1, 1987, and, on
5 each January 1st thereafter, by the percentage in-
6 crease in the statewide average weekly wage. On Jan-
7 uary 1, 1987, and on each January 1st thereafter, the
8 higher retention limit shall be increased by the
9 amount necessary to retain a \$200,000 difference be-
10 tween the 2 retention limits. "Ultimate loss," as
11 used in this section, means the actual loss amount
12 which a member is obligated to pay and which is paid
13 by the member for workers' compensation benefits and
14 shall not include claim expenses, assessments, dam-
15 ages or penalties. A loss is incurred by the reins-
16 urance association on the date on which the accident
17 or other compensable event giving rise to the loss
18 occurs, and a member is liable for a loss up to its
19 retention limit in effect at the time that the loss
20 was incurred, except that members which are deter-
21 mined by the reinsurance association to be controlled
22 by or under common control with another member, and
23 which are liable for claims from one or more employ-
24 ees entitled to compensation for a single compensable
25 event, including aggregate losses relating to a sin-
26 gle loss occurrence, may aggregate their losses and
27 obtain indemnification from the reinsurance associa-
28 tion for the aggregate losses in excess of the higher
29 retention limit in effect at the time the loss was
30 incurred. Each member is liable for payment of its
31 ultimate loss and shall be entitled to indemnifica-
32 tion from the reinsurance association for the ulti-
33 mate loss in excess of the member's retention limit
34 in effect at the time of the loss occurrence.

35 A member that chooses the higher retention limit
36 shall retain the liability for all losses below the
37 higher retention limit itself and shall not transfer
38 the liability to any other entity or reinsure or oth-
39 erwise contract for reimbursement or indemnification
40 for losses below its retention limit, except in the
41 following cases:

42 A. When the reinsurance or contract is with an-
43 other member which, directly or indirectly,
44 through one or more intermediaries, control or
45 are controlled by or are under common control
46 with the member;

1 B. When the reinsurance or contract provides for
2 reimbursement of indemnification of a member if
3 and only if the total of all claims which the
4 member pays or incurs, but which are not reim-
5 bursable or subject to indemnification by the re-
6 insurance association for a given period of time,
7 exceeds a dollar value or percentage of premium
8 written or earned and stated in the reinsurance
9 agreement or contract;

10 C. When the reinsurance or contract is a pooling
11 arrangement with other insurers where liability
12 of the member to pay claims is incidental to par-
13 ticipation in the pool and not as a result of
14 providing workers' compensation insurance to em-
15 ployers on a direct basis;

16 D. When the reinsurance or contract is limited
17 to all the claims of a specific insured or a mem-
18 ber which are reimbursed or indemnified by a re-
19 insurer which, directly or indirectly, through
20 one or more intermediaries, controls or is con-
21 trolled by or is under common control with the
22 insured of the member so long as any subsequent
23 contract or reinsurance of the reinsurer relating
24 to the claims of the insured of a member is not
25 inconsistent with the bases of exception provided
26 under paragraphs A, B and C; or

27 E. When the reinsurance or contract is limited
28 to all claims of a specific self-insurer member
29 which are reimbursed or indemnified by a reinsur-
30 er which, directly or indirectly, through one or
31 more intermediaries, controls or is controlled by
32 or is under the common control with the self-
33 insurer member so long as any subsequent contract
34 or reinsurance of the reinsurer relating to the
35 claims of the self-insurer member are not incon-
36 sistent with the bases for exception provided un-
37 der paragraphs A, B and C.

38 Whenever it appears to the Superintendent of Insur-
39 ance that any member that chooses the higher reten-
40 tion limit has participated in the transfer of lia-
41 bility to any other entity or reinsured or otherwise
42 contract for reimbursement or indemnification of
43 losses below its retention limit in a manner incon-

1 sistent with the bases for exception provided under
2 paragraphs A, B, C, D and E, the superintendent may,
3 after giving notice and an opportunity to be heard,
4 order the member to pay to the State an amount not to
5 exceed twice the difference between the reinsurance
6 premium for the higher and lower retention limits ap-
7 licable to the member for each year in which the
8 prohibited reinsurance or contract was in effect.
9 Any member subject to this penalty provision shall
10 continue to be bound by its selection of the higher
11 retention limit for purposes of membership in the re-
12 insurance association.

13 3. Withdrawal. An insurer may withdraw from the
14 reinsurance association only upon ceasing to be au-
15 thorized by license issued by the Superintendent of
16 Insurance to transact workers' compensation insurance
17 in this State and when all workers' compensation in-
18 surance policies issued by that insurer have expired.
19 A self-insurer may withdraw from the reinsurance as-
20 sociation only upon ceasing to be approved to
21 self-insure workers' compensation liability in this
22 State.

23 An insurer or self-insurer which withdraws or whose
24 membership in the reinsurance association is termi-
25 nated shall continue to be bound by the plan of oper-
26 ation. Upon withdrawal or termination, all unpaid
27 premiums which have been charged to the withdrawing
28 or terminated member shall be payable as of the ef-
29 fective date of the withdrawal or termination.

30 4. Insolvent member. An unsatisfied net liabil-
31 ity to the reinsurance association of an insolvent
32 member shall be assumed by and apportioned among the
33 remaining members of the reinsurance association as
34 provided in the plan of operation. The reinsurance
35 association shall have all rights allowed by law on
36 behalf of the remaining members against the estate or
37 funds of the insolvent member for sums due the rein-
38 surance association.

39 5. Merger or consolidation. When a member has
40 been merged or consolidated into another insurer or
41 self-insurer, or another insurer, which provides
42 workers' compensation insurance has reinsured a
43 member's entire business, the member and successors

1 in interest of the member shall remain liable for the
2 member's obligations.

3 6. Identification of portion of losses exceeding
4 retention limit. The superintendent shall require
5 each member to identify the portion of all losses
6 which exceed its retention limit selected under this
7 section in any report filed with the Superintendent
8 of Insurance for use in reviewing the workers' com-
9 ensation schedule of rates.

10 §122. Duties and powers

11 The reinsurance association shall do the follow-
12 ing on behalf of its members:

13 1. Assumption of liability. Assume 100% of the
14 liability as provided in section 121;

15 2. Procedures for report of claims. Establish
16 procedures by which members shall promptly report to
17 the reinsurance association each claim which, on the
18 basis of the injury sustained, may reasonably be an-
19 anticipated to involve liability to the reinsurance as-
20 sociation if the member is held liable. Solely for
21 the purpose of reporting claims, the member shall in
22 all instances consider itself legally liable for the
23 injury. The member shall advise the reinsurance as-
24 sociation of subsequent developments likely to mate-
25 rially affect the interest of the reinsurance associ-
26 ation in the claim;

27 3. Loss and expense data. Maintain relevant
28 loss and expense data relative to all liabilities of
29 the reinsurance association and require each member
30 to furnish statistics in connection with liabilities
31 of the reinsurance association at such times and in
32 such form and detail as may be required by the plan
33 of operation;

34 4. Premiums. Calculate and charge to members a
35 total premium sufficient to cover the expected lia-
36 bility which the reinsurance association will incur
37 in excess of the higher retention limit, but less
38 than the prefunded limit, together with incurred or
39 estimated to be incurred operating and administrative
40 expenses for the period to which this premium ap-

1 plies, for claims in excess of the prefunded limit in
2 effect at the time the loss was incurred. The
3 prefunded limit shall be \$2,500,000 on and after the
4 effective date of this chapter, provided that the
5 prefunded limit shall be increased on January 1,
6 1987, and on each January 1st thereafter by the per-
7 centage increase in the statewide average weekly
8 wage, to the nearest \$100,000. Each member shall be
9 charged a proportion of the total premium in an
10 amount equal to its proportion of the exposure base
11 of all members during the period to which the rein-
12 insurance association premium will apply. The exposure
13 base shall be determined by the board and is subject
14 to the approval of the Superintendent of Insurance.
15 In determining the exposure base, the board shall
16 consider, among other things, equity, administrative
17 convenience, records maintained by members,
18 amendability to audit and degree of risk refinement.
19 Each member exercising the lower retention option
20 shall also be charged a premium established by the
21 board as sufficient to cover incurred or estimated to
22 be incurred claims for the liability the reinsurance
23 association is likely to incur between the lower and
24 higher retention limits for the period to which the
25 premium applies. Each member shall also be charged a
26 premium determined by the board to equitably distrib-
27 ute excess or deficient premiums from previous peri-
28 ods, including any excess or deficient premiums re-
29 sulting from a retroactive change in the prefunded
30 limit. The premiums charged to members shall not be
31 unfairly discriminatory. All premiums must be ap-
32 proved by the Superintendent of Insurance;

33 5. Acceptance of premiums. Require and accept
34 the payment of premiums from members of the reinsur-
35 ance association;

36 6. Distribution of sums. Receive and distribute
37 all sums required by the operation of the reinsurance
38 association;

39 7. Review of procedures and practices; adjust-
40 ment of claims. Establish procedures for reviewing
41 claims' procedures and practices of members of the
42 reinsurance association. If the claims, procedures
43 or practices of a member are considered inadequate to
44 properly service the liabilities of the reinsurance

1 association, the reinsurance association may under-
2 take, or may contract with another person, including
3 another member, to adjust or assist in the adjustment
4 of claims which create a potential liability to the
5 association. The reinsurance association may charge
6 the cost of the adjustment under this subsection to
7 the member, except that any penalties or interest in-
8 curring as a result of actions by the reinsurance as-
9 sociation after it has undertaken adjustment of the
10 claim shall not be charged to the member, but shall
11 be included in the ultimate loss and listed as a sep-
12 arate item; and

13 8. Report. Provide each member of the reinsur-
14 ance association with an annual report of the opera-
15 tions of the reinsurance association in a form the
16 board of directors may specify.

17 §123. Additional powers

18 In addition to the powers granted in section 122,
19 the reinsurance association may do the following:

20 1. Suit. Sue and be sued. A judgment against
21 the reinsurance association shall not create any di-
22 rect liability against the individual members of the
23 reinsurance association. The reinsurance association
24 shall provide in the plan of operation for the indem-
25 nification, to the extent provided in the plan of op-
26 eration, of the members, members of the board of di-
27 rectors of the reinsurance association and officers,
28 employees and other persons lawfully acting on behalf
29 of the reinsurance association;

30 2. Reinsurance of liability. Reinsure all or
31 any portion of its potential liability, including po-
32 tential liability in excess of the prefunded limit,
33 with reinsurers licensed to transact insurance in
34 this State or otherwise approved by the Superintend-
35 ent of Insurance;

36 3. Equipment; personnel. Provide for appropri-
37 ate housing, equipment and personnel as may be neces-
38 sary to assure the efficient operation of the rein-
39 surance association;

1 4. Contracts for goods and services. Contract
2 for goods and services, including, but not limited
3 to, independent claims management, actuarial, invest-
4 ment and legal services from others within or without
5 this State to assure the efficient operation of the
6 reinsurance association;

7 5. Operating rules. Promulgate operating rules,
8 consistent with the plan of operation for the admin-
9 istration of the reinsurance association, enforce
10 those operating rules and delegate authority as nec-
11 essary to assure the proper administration and opera-
12 tion of the reinsurance association;

13 6. Intervention and prosecution. Intervene in
14 or prosecute at any time, including, but not limited
15 to, intervention or prosecution as subrogee to the
16 member's rights in a 3rd-party action, any proceeding
17 in which liability of the reinsurance association
18 may, in the opinion of the board of directors of the
19 reinsurance association or its designee, be estab-
20 lished or the reinsurance association affected in any
21 other way;

22 7. Hearings concerning operation. Hear and de-
23 termine complaints of a company or other interested
24 party concerning the operation of the reinsurance as-
25 sociation; and

26 8. Other acts. Perform other acts not specifi-
27 cally enumerated in this section which are necessary
28 or proper to accomplish the purposes of the reinsur-
29 ance association and which are not inconsistent with
30 law or with the plan of operation.

31 §124. Board of directors

32 A board of directors of the reinsurance associa-
33 tion is created and is responsible for the operation
34 of the reinsurance association consistent with the
35 plan of operation and this chapter. The board shall
36 consist of 13 directors. Four directors shall repre-
37 sent insurers, 6 directors shall represent employers,
38 at least one, but not more than 3, of whom shall
39 represent self-insurers and 3 directors shall repre-
40 sent employees. Members of the reinsurance associa-
41 tion shall elect the directors who represent insurers

1 and the Superintendent of Insurance shall appoint the
2 directors who represent employers and employees for
3 the terms authorized in the plan of operation. Each
4 director is entitled to one vote. Terms of the di-
5 rectors shall be staggered so that the terms of all
6 the directors do not expire at the same time and so
7 that a director does not serve a term of more than 4
8 years. The board shall select a chairman and other
9 officers it deems appropriate. A majority of the di-
10 rectors currently holding office constitutes a quo-
11 rum. Action may be taken by a majority vote of the
12 directors present.

13 §125. Plan of operation

14 1. Provisions. The plan of operation shall pro-
15 vide for all of the following:

16 A. The establishment of necessary facilities;

17 B. The management and operation of the reinsur-
18 ance association;

19 C. A preliminary premium, payable by each member
20 in proportion to its total premium in the year
21 preceding the inauguration of the reinsurance as-
22 sociation, for initial expenses necessary to com-
23 mence operation of the reinsurance association;

24 D. Procedures to be utilized in charging premi-
25 ums, including adjustments from excess or defi-
26 cient premiums from prior periods;

27 E. Procedures governing the actual payment of
28 premiums to the reinsurance association;

29 F. Reimbursement of each member of the board by
30 the reinsurance association for actual and neces-
31 sary expenses incurred on reinsurance association
32 business;

33 G. The composition, terms, compensation and oth-
34 er necessary rules consistent with section 124
35 for boards of directors of the reinsurance asso-
36 ciation to succeed the initial board in section
37 128;

1 H. The investment policy of the reinsurance as-
2 sociation; and

3 I. Any other matters required by or necessary to
4 effectively implement this chapter.

5 2. Validity. If the reinsurance association is
6 incorporated, the plan of operation shall be filed
7 with and accepted by the Secretary of State as the
8 corporation's articles of incorporation and bylaws.
9 The plan of operation shall be valid as articles of
10 incorporation and bylaws, notwithstanding that one or
11 more of the required provisions for articles and by-
12 laws is not included or requirements of form are not
13 followed.

14 3. Amendments. The plan of operation may be
15 amended as follows.

16 A. The plan of operation may be amended, in
17 whole or in part, by proposal of an amendment by
18 a member of the board and adoption by a majority
19 vote of the board at a meeting duly called for
20 that purpose, ratification by a majority vote of
21 the members at any annual meeting or special
22 meeting duly called for that purpose, and approv-
23 al of the Superintendent of Insurance; provided
24 that an amendment shall be deemed approved 30
25 days after the date following the date of ratifi-
26 cation by the members if not sooner disapproved
27 by written order of the Superintendent of Insur-
28 ance.

29 B. The board shall have emergency powers to
30 amend the plan at a meeting duly called for that
31 purpose, without ratification by the members;
32 provided that a meeting of members shall be
33 scheduled to consider ratification of the amend-
34 ment within 90 days.

35 C. If the board proposes an amendment which the
36 members decline to ratify, the Superintendent of
37 Insurance may, upon request of the board, amend
38 the plan as proposed by the board when he deter-
39 mines that failure to adopt the proposed amend-
40 ment may seriously impair the ability of the re-
41 insurance association to meet its financial obli-
42 gations.

1 D. By a majority vote, the members, voting in
2 person or by proxy if authorized by the board, at
3 a meeting duly called for that purpose, may au-
4 thorize the board to exercise the power of amend-
5 ment of the plan without ratification by the mem-
6 bers. When the members have authorized the board
7 to amend the plan without ratification by the
8 members, the board may, by a majority vote of the
9 directors, amend the plan, provided that notice
10 of the meeting and of the proposed amendment
11 shall be given to each director and officer, in-
12 cluding the Superintendent of Insurance. By a
13 majority vote, the members, voting in person or
14 by proxy if authorized by the board, at a meeting
15 duly called for that purpose, may prospectively
16 revoke the authority of the board to amend the
17 plan without ratification by the members.

18 §126. Applicability

19 1. Examination by the Superintendent of Insur-
20 ance. The reinsurance association is subject to all
21 provisions of this chapter. The Superintendent of
22 Insurance or an authorized representative may visit
23 the reinsurance association at any time and examine,
24 audit or evaluate the reinsurance association's oper-
25 ations, records and practices.

26 2. Costs and expenses. The Superintendent of
27 Insurance may order and the reinsurance association
28 shall pay the costs and expenses of any examination,
29 audit or evaluation conducted under subsection 1.

30 §127. Premium inclusion in ratemaking

31 Premiums charged members by the reinsurance asso-
32 ciation shall be recognized in the rate-making proce-
33 dures for insurance rates.

34 §128. Initial board of directors

35 The Governor shall appoint the initial 13 members
36 of the board of directors representative of the same
37 interests as set out in section 124. These initial
38 directors shall serve for a term of one year.

1

STATEMENT OF FACT

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This bill establishes the Workers' Compensation
3 Reinsurance Association.

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