

# MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

No. 1559

S.P. 516

In Senate, May 14, 1987

Submitted by the Department of Professional and Financial Regulation pursuant to Joint Rule 24.

Reference to the Committee on Banking and Insurance suggested and ordered printed.

JOY J. O'BRIEN, Secretary of the Senate

Presented by Senator BRANNIGAN of Cumberland.

Cosponsored by Senator COLLINS of Aroostook, Representative DAVIS of Monmouth, Representative ERWIN of Rumford.

STATE OF MAINE

IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND EIGHTY-SEVEN

**AN ACT to Amend the Maine Produce Liability  
Risk Retention Act.**

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

Sec. 1. 24-A MRSA §427, sub-§8, as enacted by PL 1985, c. 524, §4, is amended to read:

8. ~~Product--liability--or--completed--operations liability~~ Liability coverage as defined in chapter 69 71 issued to a risk retention group or any member of that group.

Sec. 2. 24-A MRSA c. 69 is repealed.

Sec. 3. 24-A MRSA c. 71 is enacted to read:



1           3. Hazardous financial condition. "Hazardous  
2 financial condition" means that, based on its present  
3 or reasonably anticipated financial condition, a risk  
4 retention group, although not yet financially im-  
5 paired or insolvent, is unlikely to be able:

6           A. To meet obligations to policyholders with re-  
7 spect to known claims and reasonably anticipated  
8 claims; or

9           B. To pay other obligations in the normal course  
10 of business.

11           4. Impairment. "Impairment," as to a risk re-  
12 tion group, exists when:

13           A. If a stock corporation, the sum of the  
14 group's liabilities and paid-in capital stock ex-  
15 ceeds its assets;

16           B. If a mutual company, the sum of its liabili-  
17 ties and required minimum basic surplus exceeds  
18 its assets; and

19           C. If other than a stock or mutual company, the  
20 sum of liabilities and any fund balance equal to  
21 the amount required by a mutual company exceeds  
22 its assets.

23           5. Insurance. "Insurance" means primary insur-  
24 ance, excess insurance, reinsurance, surplus lines  
25 insurance and any other arrangement for shifting and  
26 distributing risk which is determined to be insurance  
27 under the laws of this State.

28           6. Liability. "Liability" means:

29           A. Legal liability for damages, including costs  
30 of defense, legal costs and fees and other claims  
31 expenses, because of injuries to other persons,  
32 damage to their property or other damage or loss  
33 to such other persons resulting from or arising  
34 out of:

35                   (1) Any business, whether profit or non-  
36 profit, trade, product, services, including  
37 professional services, premises or opera-  
38 tions; or

1                   (2) Any activity of any state or local gov-  
2                   ernment or any agency or political subdivi-  
3                   sion of state or local government; and

4                   B. Does not include personal risk liability and  
5                   an employer's liability with respect to its em-  
6                   ployees other than legal liability under the Fed-  
7                   eral Employers' Liability Act, United States  
8                   Code, Title 45, Section 51, et seq.

9                   7. Personal risk liability. "Personal risk lia-  
10                  bility" means liability for damages because of injury  
11                  to any person, damage to property or other loss or  
12                  damage resulting from any personal, familial or  
13                  household responsibilities or activities, rather than  
14                  from responsibilities or activities referred to in  
15                  subsection 6.

16                  8. Plan of operation or feasibility study.  
17                  "Plan of operation or feasibility study" means an  
18                  analysis which presents the expected activities and  
19                  results of a risk retention group, including, at a  
20                  minimum:

21                  A. The coverages, deductibles, coverage limits,  
22                  rates and rating classification systems for each  
23                  line of insurance the group intends to offer;

24                  B. Historical and expected loss experience, to  
25                  the extent available, of the proposed members and  
26                  national experience of similar exposures;

27                  C. Pro forma financial statements and projec-  
28                  tions;

29                  D. Appropriate opinions by a qualified, indepen-  
30                  dent casualty actuary, including a determination  
31                  of minimum premium or participation levels re-  
32                  quired to commence operations and to prevent a  
33                  hazardous financial condition;

34                  E. Identification of management, underwriting  
35                  procedures, managerial oversight methods and in-  
36                  vestment policies; and

37                  F. Such other matters as may be prescribed by  
38                  the superintendent for liability insurance compa-

1 nies authorized by the insurance laws of the  
2 state in which the risk retention group is  
3 chartered.

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

15 10. Product Liability Risk Retention Act of  
16 1981. "Product Liability Risk Retention Act of 1981"  
17 means the United States Public Law 97-45, the United  
18 States Code, Title 15, Section 3901, et seq.

19 11. Purchasing group. "Purchasing group" means  
20 any group which:

21 A. Has, as one of its purposes, the purchase of  
22 liability insurance on a group basis;

23 B. Purchases such insurance only for its group  
24 members and only to cover their similar or relat-  
25 ed liability exposure, as described in paragraph  
26 C;

27 C. Is composed of members whose businesses or  
28 activities are similar or related with respect to  
29 the liability to which members are exposed by  
30 virtue of any related, similar or common busi-  
31 ness, trade, product, services, premises or oper-  
32 ations; and

33 D. Is domiciled in any state.

34 12. Risk Retention Act of 1986. "Risk Retention  
35 Act of 1986" means United States Public Law 99-563,  
36 United States Code, Title 15, Section 3901, et seq.

37 13. Risk retention group. "Risk retention  
38 group" means any corporation or other limited liabil-

1 ity association formed under the laws of any state,  
2 Bermuda or the Cayman Islands:

3 A. Whose primary activity consists of assuming  
4 and spreading all, or any portion, of the liabili-  
5 ty exposure of its group members;

6 B. Which is organized for the primary purpose of  
7 conducting the activity described under paragraph  
8 A;

9 C. Which:

10 (1) Is chartered and licensed as a liabili-  
11 ty insurance company and authorized to en-  
12 gage in the business of insurance under the  
13 laws of any state; or

14 (2) Before January 1, 1985, was chartered  
15 or licensed and authorized to engage in the  
16 business of insurance under the laws of Ber-  
17 muda or the Cayman Islands and, before such  
18 date, had certified to the insurance commis-  
19 sioner of at least one state that it satis-  
20 fied the capitalization requirements of that  
21 state, except that any such group shall be  
22 considered to be a risk retention group only  
23 if it has been engaged in business continu-  
24 ously since that date and only for the pur-  
25 pose of continuing to provide insurance to  
26 cover product liability or completed opera-  
27 tions liability, as such terms were defined  
28 in the Product Liability Risk Retention Act  
29 of 1981, before the date of the enactment of  
30 the Risk Retention Act of 1986;

31 D. Which does not exclude any person from mem-  
32 bership in the group solely to provide for mem-  
33 bers of such a group a competitive advantage over  
34 such a person;

35 E. Which:

36 (1) Has, as its members, only persons who  
37 have an ownership interest in the group and  
38 which has, as its owners, only persons who  
39 are members who are provided insurance by  
40 the risk retention group; or

1                   (2) Has, as its sole member and sole owner,  
2                   an organization which is owned by persons  
3                   who are provided insurance by the risk re-  
4                   retention group;

5                   F. Whose members are engaged in businesses or  
6                   activities similar or related, with respect to  
7                   the liability of which those members are exposed  
8                   by virtue of any related, similar or common busi-  
9                   ness, trade, product, services, premises or oper-  
10                   ations;

11                   G. Whose activities do not include the provision  
12                   of insurance other than:

13                   (1) Liability insurance for assuming and  
14                   spreading all or any portion of the liabili-  
15                   ty of its group members; and

16                   (2) Reinsurance with respect to the liabil-  
17                   ity of any other risk retention group, or  
18                   any members of such other group, which is  
19                   engaged in businesses or activities so that  
20                   this group or member meets the requirement  
21                   described in paragraph F for membership in  
22                   the risk retention group which provides that  
23                   reinsurance; and

24                   H. The name of which includes the phrase "Risk  
25                   Retention Group."

26                   14. State. "State" means any state of the  
27                   United States or the District of Columbia.

28                   15. Superintendent. "Superintendent" means the  
29                   Superintendent of Insurance of this State or the com-  
30                   missioner, director or superintendent of insurance in  
31                   any other state.

32                   \$6094. Risk retention groups chartered in this State

33                   A risk retention group seeking to be chartered in  
34                   this State must be chartered and authorized as a lia-  
35                   bility insurance company and comply with the insur-  
36                   ance laws of this State and, except as provided else-  
37                   where in this Act, must comply with all the laws,  
38                   rules and requirements applicable to insurers



1 chartered and licensed in this State and with section  
2 6095 to the extent these requirements are not a limi-  
3 tation on laws, rules or requirements of this State.  
4 Before it may offer insurance in any state, each risk  
5 retention group shall also submit for approval to the  
6 superintendent a plan of operation or a feasibility  
7 study and revisions of that plan or study if the  
8 group intends to offer any additional lines of lia-  
9 bility insurance.

10 §6095. Risk retention groups not chartered in this  
11 State

12 Risk retention groups chartered in states other  
13 than this State and seeking to do business as a risk  
14 retention group in this State must comply with the  
15 laws of this State in the following manner.

16 1. Notice of operations and designation of su-  
17 perintendent as agent for service of process. Before  
18 offering insurance in this State, a risk retention  
19 group shall submit to the superintendent:

20 A. A statement identifying the state or states  
21 in which the risk retention group is chartered  
22 and licensed as a liability insurance company,  
23 the date of chartering and organization, its  
24 principal place of business and such other infor-  
25 mation, including information on its membership,  
26 as the superintendent may require to verify that  
27 the risk retention group is qualified under sec-  
28 tion 6093, subsection 10;

29 B. A copy of its plan of operation or a feasi-  
30 bility study and revisions of the plan or study  
31 submitted to its state of domicile, provided that  
32 the provision relating to the submission of a  
33 plan of operation or a feasibility study shall  
34 not apply with respect to any line or classifica-  
35 tion of liability insurance which was defined in  
36 the Product Liability Risk Retention Act of 1981  
37 before October 27, 1986, and was offered before  
38 that date by any risk retention group which had  
39 been chartered and operating for not less than 3  
40 years before that date; and

1           C. A designation of the superintendent as its  
2           agent for the purpose of receiving service of le-  
3           gal documents or process. That designation shall  
4           be subject to the provisions of section 421.

5           2. Financial condition. Any risk retention  
6           group transacting business in this State shall submit  
7           to the superintendent:

8           A. Annually, on or before March 1st, a copy of  
9           the group's financial statement submitted to its  
10           state of domicile, which shall be certified by an  
11           independent public accountant and contain a  
12           statement of opinion on loss and loss adjustment  
13           expense reserves made by a member of the American  
14           Academy of Actuaries or a qualified loss reserve  
15           specialist;

16           B. A copy of each report of examination of the  
17           risk retention group as certified by the superin-  
18           tendent or public official conducting the exami-  
19           nation;

20           C. Upon request by the superintendent, a copy of  
21           any audit performed with respect to the risk re-  
22           retention group; and

23           D. Such information as may be required to verify  
24           its continuing qualification as a risk retention  
25           group under section 6093, subsection 13.

26           3. Taxation. Premiums paid for a risk retention  
27           group shall be subject to taxation.

28           A. All premiums paid for coverages within this  
29           State to risk retention groups shall be subject  
30           to taxation at the same rate and subject to the  
31           same interest, fines and penalties for nonpayment  
32           as are applicable to authorized insurers.

33           B. With respect to risk retention groups which  
34           utilize agents or brokers in the securing of  
35           business, the agents or brokers shall report and  
36           pay the taxes for the premiums for risks which  
37           they have placed with or on behalf of these  
38           groups. Each broker shall file an annual report,  
39           on or before March 1st, with the superintendent

1 and the Treasurer of State containing a sworn  
2 statement of the gross premiums charged for cov-  
3 erage placed and the gross return premiums on the  
4 insurance cancelled, during the year ending on  
5 the preceding December 31st. At the time of fil-  
6 ing the report, he shall pay to the Treasurer of  
7 State the applicable percentage of the difference  
8 between the gross and return premiums reported  
9 for the business transacted during the year.

10 C. To the extent agents or brokers are not uti-  
11 lized or fail to pay the tax, each risk retention  
12 group shall pay the tax for risks insured within  
13 the State. Each risk retention group shall file  
14 an annual report, on or before March 1st, with  
15 the superintendent and the Treasurer of State  
16 containing a sworn statement of the gross premi-  
17 ums charged for coverage placed, and the gross  
18 return premiums on the insurance cancelled, dur-  
19 ing the year ending on the preceding December  
20 31st. At the time of filing the report, each  
21 risk retention group shall pay to the Treasurer  
22 of State the applicable percentage of the differ-  
23 ence between the gross and return premiums re-  
24 ported for the business transacted during the  
25 year.

26 4. Deceptive, false or fraudulent practices. To  
27 the extent not preempted by the Risk Retention Act of  
28 1986, any risk retention group shall be subject to  
29 the provisions of chapter 23, and Title 5, chapter  
30 10.

31 5. Examination regarding financial condition.  
32 Any risk retention group must submit to an examina-  
33 tion by the superintendent to determine its financial  
34 condition if the superintendent of the jurisdiction  
35 in which the group is chartered has not performed a  
36 timely examination or does not initiate an examina-  
37 tion within 90 days after a request by the superin-  
38 tendent. Any such examination shall be coordinated  
39 to avoid unjustified repetition and conducted in an  
40 expeditious manner and in accordance with the Nation-  
41 al Association of Insurance Commissioner's Examiner  
42 Handbook, as applicable.

1       6. Notice to purchasers. Any policy issued by a  
2 risk retention group shall contain in 10 point type  
3 on the front page and the declaration page, the fol-  
4 lowing notice:

5                                       "NOTICE

6                       This policy is issued by your risk retention  
7 group. Your risk retention group may not be sub-  
8 ject to all of the insurance laws and regulations  
9 of your state. State insurance insolvency guar-  
10 anty funds are not available for your risk reten-  
11 tion group."

12       7. Prohibited acts regarding solicitation or  
13 sale. The following acts by a risk retention group  
14 are prohibited:

15                   A. The solicitation or sale of insurance by a  
16 risk retention group to any person who is not el-  
17 igible for membership in those groups; and

18                   B. The solicitation or sale of insurance by, or  
19 operation of, a risk retention group that is in a  
20 hazardous financial condition or is financially  
21 impaired.

22       8. Prohibition on ownership by an insurance com-  
23 pany. No risk retention group shall be allowed to do  
24 business in this State if an insurance company is di-  
25 rectly or indirectly a member or owner of that risk  
26 retention group, other than in the case of a risk re-  
27 retention group, all of whose members are insurance  
28 companies.

29       9. Prohibited coverage. No risk retention group  
30 may offer insurance policy coverage prohibited by the  
31 laws of this State or by the Risk Retention Act of  
32 1986.

33       10. Delinquency proceedings. A risk retention  
34 group not chartered in this State and doing business  
35 in this State must comply with a lawful order issued  
36 in a voluntary dissolution proceeding or in a delin-  
37 quency proceeding commenced by a state insurance su-  
38 perintendent if there has been a finding of financial  
39 impairment after an examination under subsection 5.

1 §6096. Compulsory associations.

2 1. Financial contribution. No risk retention  
3 group may be permitted to join or contribute finan-  
4 cially to any insurance insolvency guaranty fund or  
5 similar mechanism in this State, nor may any risk re-  
6 retention group or its insureds receive any benefit  
7 from any such fund for claims arising out of the op-  
8 erations of the risk retention group.

9 2. Participation. A risk retention group shall  
10 participate in this State's joint underwriting asso-  
11 ciations and mandatory liability pools as provided by  
12 chapter 20 and section 2325.

13 §6097. Purchasing groups; exemption from certain  
14 laws relating to the group purchase of insur-  
15 ance

16 Any purchasing group meeting the criteria estab-  
17 lished under the provisions of the federal Liability  
18 Risk Retention Act of 1986 is exempt from any law of  
19 this State relating to the creation of groups for the  
20 purchase of insurance, prohibition of group purchas-  
21 ing or any law that discriminates against a purchas-  
22 ing group or its members. In addition, an insurer is  
23 exempt from any law of this State which prohibits  
24 providing, or offering to provide, to a purchasing  
25 group or its members advantages based on their loss  
26 and expense experience not afforded to other persons  
27 with respect to rates, policy forms, coverages or  
28 other matters. A purchasing group is subject to all  
29 other applicable laws of this State.

30 §6098. Notice and registration requirements of pur-  
31 chasing groups

32 1. Notice. A purchasing group which intends to  
33 do business in this State shall furnish notice to the  
34 superintendent which shall:

35 A. Identify the state in which the group is dom-  
36 iciled;

37 B. Specify the lines and classifications of lia-  
38 bility insurance which the purchasing group in-  
39 tends to purchase;

1 C. Identify the insurance company from which the  
2 group intends to purchase its insurance and the  
3 domicile of that company;

4 D. Identify the principal place of business of  
5 the group; and

6 E. Provide such other information as may be re-  
7 quired by the superintendent to verify that the  
8 purchasing group is qualified under section 6093,  
9 subsection 11.

10 2. Registration. The purchasing group shall  
11 register with and designate the superintendent as its  
12 agent solely for the purpose of receiving service or  
13 legal documents or process, except that the require-  
14 ments shall not apply in the case of a purchasing  
15 group:

16 A. Which:

17 (1) Was domiciled before April 2, 1986; and

18 (2) Is domiciled on and after October 27,  
19 1986, in any state of the United States;

20 B. Which:

21 (1) Before October 27, 1986, purchased in-  
22 surance from an insurance carrier licensed  
23 in any state; and

24 (2) Since October 27, 1986, purchased its  
25 insurance from an insurance carrier licensed  
26 in any state;

27 C. Which was a purchasing group under the re-  
28 quirements of the Product Liability Retention Act  
29 of 1981 before October 27, 1986; and

30 D. Which does not purchase insurance that was  
31 not authorized for purposes of an exemption under  
32 that Act, as in effect before October 27, 1986.  
33 That designation shall be subject to section 421.

34 §6099. Restrictions on insurance purchased by pur-  
35 chasing groups

1           A purchasing group may not purchase insurance  
2 from a risk retention group that is not chartered in  
3 a state or from an insurer not admitted in the state  
4 in which the purchasing group is located, unless the  
5 purchase is effected through a licensed agent or broker  
6 acting pursuant to the surplus lines laws and  
7 regulations or rules of that state.

8           §6100. Administrative and procedural authority re-  
9 garding risk retention groups and purchasing  
10 groups

11           The superintendent is authorized to make use of  
12 any of the powers established under the Maine Insur-  
13 ance Code as long as those powers are not specificall-  
14 ly preempted by the Product Liability Risk Retention  
15 Act of 1981, as amended by the Risk Retention Act of  
16 1986. This includes, but is not limited to, the  
17 superintendent's administrative authority to investi-  
18 gate, issue subpoenas, conduct depositions and hear-  
19 ings, issue orders and impose penalties. With regard  
20 to any investigation, administrative proceedings or  
21 litigation, the superintendent can rely on the proced-  
22 ural laws and rules of the State. The  
23 superintendent's injunctive authority in regard to  
24 risk retention groups is restricted by the require-  
25 ment that any injunction be issued by a court of com-  
26 petent jurisdiction.

27           §6101. Penalties

28           A risk retention group which violates any provi-  
29 sion of this Act will be subject to fines and penal-  
30 ties applicable to licensed insurers generally, in-  
31 cluding revocation of its license or the right to do  
32 business in this State.

33           §6102. Duty of agents or brokers to obtain license

34           Any person acting, or offering to act, as an  
35 agent or broker for a risk retention group or pur-  
36 chasing group, which solicits members, sells insur-  
37 ance coverage, purchases coverage for its members lo-  
38 cated within the State or otherwise does business in  
39 this State shall, before commencing any such activi-  
40 ty, obtain an appropriate license from the superin-  
41 tendent.

1     §6103. Binding effects of orders issued in the  
2             United States District Court

3             An order issued by any district court of the  
4     United States enjoining a risk retention group from  
5     soliciting or selling insurance or operating in any  
6     state, or in all states or in any territory or pos-  
7     session of the United States, upon a finding that  
8     such a group is in a hazardous financial condition,  
9     shall be enforceable in the courts of this State.

10    §6104. Rules

11             The superintendent may establish and from time to  
12    time amend such rules relating to risk retention  
13    groups as may be necessary or desirable to carry out  
14    the provisions of this Act.

15

STATEMENT OF FACT

16             In 1981, Congress enacted a federal Product Lia-  
17     bility Risk Retention Act. This Act authorized the  
18     formation of product liability risk retention and  
19     purchasing groups and placed certain regulatory func-  
20     tions with respect to these groups on the states.  
21     The Second Regular Session of the 112th Legislature  
22     enacted the Maine Product Liability Risk Retention  
23     Act which provides for the State's performance of the  
24     responsibility placed upon it by Congress. Subse-  
25     quently, Congress amended the federal act to broaden  
26     its scope to most forms of commercial liability in-  
27     surance and to greatly modify the role of the states  
28     in regulation of risk retention and purchasing  
29     groups. This bill amends the state law to coincide  
30     with the federal law changes.

31

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