

MAINE STATE LEGISLATURE

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(New Draft of S.P. 516, L.D. 1559) CORRECTED COPY
(New Title) JUNE 15, 1987
FIRST REGULAR SESSION (Please Destroy any copy
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ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

No. 1858

S.P. 635

In Senate, June 12, 1987

Reported by Senator Theriault of Aroostook for the
Committee on Banking and Insurance and printed under Joint Rule
2. Original Bill sponsored by Senator Brannigan of
Cumberland. Cosponsored by: Senator Collins of Aroostook,
Representative Davis of Monmouth, Representative Erwin of
Rumford.

JOY J. O'BRIEN, Secretary of the Senate

STATE OF MAINE

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

1 AN ACT to Amend the Maine Product Liability
2 Risk Retention Act.
3

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

6 Sec. 1. 24-A MRSA §427, sub-§8, as enacted by PL
7 1985, c. 524, §4, is repealed and the following en-
8 acted in its place:

9 8. Liability coverage as defined in chapter 71
10 issued to a risk retention group, a purchasing group
11 or any member of those groups.

12 Sec. 2. 24-A MRSA c. 69 is repealed.

1 B. For an unincorporated entity, the state of
2 its principal place of business.

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

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

11 B. To pay other obligations in the normal course
12 of business.

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

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

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

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

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

30 6. Liability. "Liability" means:

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

1 (1) Any business, whether profit or non-
2 profit, trade, product, services, including
3 professional services, premises or opera-
4 tions; or

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

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

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

20 8. Plan of operation or feasibility study.
21 "Plan of operation or feasibility study" means an
22 analysis which presents the expected activities and
23 results of a risk retention group, including, at a
24 minimum:

25 A. Information sufficient to verify that its
26 members are engaged in businesses or activities
27 similar or related with respect to the liability
28 to which the members are exposed by virtue of any
29 related, similar or consumer business, trade,
30 product, services, premises or operation;

31 B. The coverages, deductibles, coverage limits,
32 rates and rating classification systems for each
33 line of insurance the group intends to offer;

34 C. Historical and expected loss experience, to
35 the extent available; of the proposed members and
36 national experience of similar exposures;

37 D. Pro forma financial statements and projec-
38 tions;

1 E. Appropriate opinions by a qualified, independ-
2 ent casualty actuary, including a determination
3 of minimum premium or participation levels re-
4 quired to commence operations and to prevent a
5 hazardous financial condition;

6 F. Identification of management, underwriting
7 and claim procedures, marketing methods, manage-
8 rial oversight methods and investment policies;
9 and

10 G. Such other matters as may be prescribed by
11 the superintendent for liability insurance compa-
12 nies authorized by the insurance laws of the
13 state in which the risk retention group is
14 chartered.

15 9. Product liability. "Product liability" means
16 liability for damages because of any personal injury,
17 death, emotional harm, consequential economic damage
18 or property damage, including damages resulting from
19 the loss of use of property, arising out of the manu-
20 facture, design, importation, distribution, packag-
21 ing, labeling, lease or sale of a product, but does
22 not include the liability of any person for those
23 damages if the product involved was in the possession
24 of such a person when the incident giving rise to the
25 claim occurred.

26 10. Product Liability Risk Retention Act of
27 1981. "Product Liability Risk Retention Act of 1981"
28 means the United States Public Law 97-45, the United
29 States Code, Title 15, Section 3901, et seq.

30 11. Purchasing group. "Purchasing group" means
31 any group which:

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

34 B. Purchases such insurance only for its group
35 members and only to cover their similar or relat-
36 ed liability exposure, as described in paragraph
37 C;

38 C. Is composed of members whose businesses or
39 activities are similar or related with respect to

1 the liability to which members are exposed by
2 virtue of any related, similar or common busi-
3 ness, trade, product, services, premises or oper-
4 ations; and

5 D. Is domiciled in any state.

6 12. Risk Retention Act of 1986. "Risk Retention
7 Amendments of 1986" means United States Public Law
8 99-563, United States Code, Title 15, Section 3901,
9 et seq.

10 13. Risk retention group. "Risk retention
11 group" means any corporation or other limited liabil-
12 ity association:

13 A. Whose primary activity consists of assuming
14 and spreading all, or any portion, of the liabil-
15 ity exposure of its group members;

16 B. Which is organized for the primary purpose of
17 conducting the activity described under paragraph
18 A;

19 C. Which:

20 (1) Is chartered and licensed as a liabili-
21 ty insurance company and authorized to en-
22 gage in the business of insurance under the
23 laws of any state; or

24 (2) Before January 1, 1985, was chartered
25 or licensed and authorized to engage in the
26 business of insurance under the laws of Ber-
27 muda or the Cayman Islands and, before such
28 date, had certified to the insurance super-
29 intendent of at least one state, which cer-
30 tification was accepted, that it satisfied
31 the capitalization requirements of that
32 state, except that any such group shall be
33 considered to be a risk retention group only
34 if it has been engaged in business continu-
35 ously since that date and only for the pur-
36 pose of continuing to provide insurance to
37 cover product liability or completed opera-
38 tions liability, as such terms were defined
39 in the Product Liability Risk Retention Act

1 of 1981, before the date of the enactment of
2 the Risk Retention Amendments of 1986;

3 D. Which does not exclude any person from mem-
4 bership in the group solely to provide for mem-
5 bers of such a group a competitive advantage over
6 such a person;

7 E. Which:

8 (1) Has, as its owners, only persons who
9 comprise the membership of the risk reten-
10 tion group and who are provided insurance by
11 such group; or

12 (2) Has, as its sole owner, an organization
13 which:

14 (a) Has as its members only persons
15 who comprise the membership of the risk
16 retention group; and

17 (b) Has as its owners only persons who
18 comprise the membership of the risk re-
19 tention group and who are provided in-
20 surance by such groups;

21 F. Whose members are engaged in businesses or
22 activities similar or related, with respect to
23 the liability of which those members are exposed
24 by virtue of any related, similar or common busi-
25 ness, trade, product, services, premises or oper-
26 ations;

27 G. Whose activities do not include the provision
28 of insurance other than:

29 (1) Liability insurance for assuming and
30 spreading all or any portion of the liabili-
31 ty of its group members; and

32 (2) Reinsurance with respect to the liabil-
33 ity of any other risk retention group, or
34 any members of such other group, which is
35 engaged in businesses or activities so that
36 this group or member meets the requirement
37 described in paragraph F for membership in

1 the risk retention group which provides that
2 reinsurance; and

3 H. The name of which includes the phrase "Risk
4 Retention Group."

5 14. State. "State" means any state of the
6 United States or the District of Columbia.

7 15. Superintendent. "Superintendent" means the
8 Superintendent of Insurance of this State or the com-
9 missioner, director or superintendent of insurance in
10 any other state.

11 §6094. Risk retention groups chartered in this State

12 A risk retention group shall be chartered and au-
13 thorized, pursuant to the provisions of this title,
14 as a liability insurer to write only liability in-
15 surance pursuant to this Act and, except as provided
16 elsewhere in this Act, must comply with all the laws,
17 rules and requirements applicable to insurers
18 chartered and licensed in this State and with section
19 6095 to the extent these requirements are not a limi-
20 tation on laws, rules or requirements of this State.
21 Before it may offer insurance in any state, each risk
22 retention group shall also submit for approval to the
23 superintendent a plan of operation or a feasibility
24 study and revisions of that plan or study if the
25 group intends to offer any additional lines of lia-
26 bility insurance. The group shall not offer any ad-
27 ditional kinds of liability insurance in this state
28 or in any other state, until a revision of such plan
29 or study is approved by the superintendent.

30 In addition to other requirements for licensure,
31 the risk retention group shall, at the time of filing
32 its application for license, provide to the superin-
33 tendent in summary form the following information:
34 The identity of the initial members of the group, the
35 identity of those individuals who organized the group
36 or who will provide administrative services or other-
37 wise influence or control the activities of the
38 group, the amount, source and nature of initial capi-
39 talization, the coverages to be afforded, and the
40 states in which the group intends to operate. Upon
41 receipt of the information the superintendent shall

1 forward it to the National Association of Insurance
2 Commissioners. This notification shall not be deemed
3 to satisfy other requirements of this chapter.

4 §6095. Risk retention groups not chartered in this
5 State

6 Risk retention groups chartered and licensed in
7 states other than this State and seeking to do busi-
8 ness as a risk retention group in this State must
9 comply with the laws of this State in the following
10 manner.

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

15 A. A statement identifying the state or states
16 in which the risk retention group is chartered
17 and licensed as a liability insurance company,
18 the date of chartering and organization, its
19 principal place of business and such other infor-
20 mation, including information on its membership,
21 as the superintendent may require to verify that
22 the risk retention group is qualified under sec-
23 tion 6093, subsection 13;

24 B. A copy of its plan of operation or a feasi-
25 bility study and applicable revisions of the plan
26 or study submitted to its state of domicile, pro-
27 vided that the provision relating to the submis-
28 sion of a plan of operation or a feasibility
29 study shall not apply with respect to any line or
30 classification of liability insurance which was
31 defined in the Product Liability Risk Retention
32 Act of 1981 before October 27, 1986, and was of-
33 fered before that date by any risk retention
34 group which had been chartered and operating for
35 not less than 3 years before that date; and

36 C. A designation of the superintendent as its
37 agent for the purpose of receiving service of le-
38 gal documents or process. That designation shall
39 be subject to the provisions of section 421.

1 2. Financial condition. Any risk retention
2 group transacting business in this State shall submit
3 to the superintendent:

4 A. Annually, on or before March 1st, a copy of
5 the group's financial statement submitted to the
6 state in which the risk retention group is
7 chartered and licensed, which shall be certified
8 by an independent public accountant and contain a
9 statement of opinion on loss and loss adjustment
10 expense reserves made by a member of the American
11 Academy of Actuaries who is qualified to certify
12 casualty loss reserves;

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

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

20 D. Such information as may be required to verify
21 its continuing qualification as a risk retention
22 group under section 6093, subsection 13.

23 3. Taxation. Each risk retention group shall be
24 responsible for the payment of premium tax in accord-
25 ance with Title 36, section 2513-A.

26 4. Deceptive, false or fraudulent practices. To
27 the extent not preempted by the Risk Retention Amend-
28 ments of 1986, any risk retention group shall be sub-
29 ject to the provisions of chapter 23, and Title 5,
30 chapter 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 and licensed has not
36 performed a timely examination or does not initiate
37 an examination within 90 days after a request by the
38 superintendent. Any such examination shall be coor-
39 ordinated to avoid unjustified repetition and conducted
40 in an expeditious manner and in accordance with the

1 National Association of Insurance Commissioner's Ex-
2 aminer Handbook, as applicable.

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

7 "NOTICE

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

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

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

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

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

31 9. Prohibited coverage. No risk retention group
32 may offer insurance policy coverage prohibited by the
33 laws of this State or by the Risk Retention Amend-
34 ments of 1986.

35 10. Delinquency proceedings. A risk retention
36 group not chartered in this State and doing business
37 in this State must comply with a lawful order issued
38 in a voluntary dissolution proceeding or in a delin-

1 quency proceeding commenced by a state insurance su-
2 perintendent if there has been a finding of financial
3 impairment after an examination under subsection 5.

4 §6096. Compulsory associations

5 1. Financial contribution. No risk retention
6 group may be required or permitted to join or con-
7 tribute financially to any insurance insolvency guar-
8 anty fund or similar mechanism in this State, nor may
9 any risk retention group or its insureds or claimants
10 against its insureds, receive any benefit from any
11 such fund for claims arising under the insurance po-
12 licies issued by the risk retention group.

13 2. Insurer not authorized. When a purchasing
14 group obtains insurance covering its members' risks
15 from an insurer not authorized in this State or a
16 risk retention group, these risks, wherever resident
17 or located, shall not be covered by any insurance
18 guaranty fund or similar mechanism in this State.

19 3. Authorized insurer. When a purchasing groups
20 obtains insurance covering its members' risks from an
21 insurer authorized in this State, only risks resident
22 or located in this State shall be covered by the
23 Maine Insurance Guaranty Association subject to chap-
24 ter 57, subchapter III.

25 §6097. Purchasing groups; exemption from certain
26 laws relating to the group purchase of insur-
27 ance

28 Any purchasing group meeting the criteria estab-
29 lished under the provisions of the federal Liability
30 Risk Retention Amendments of 1986 is exempt from any
31 law of this State relating to the creation of groups
32 for the purchase of insurance, prohibition of group
33 purchasing or any law that discriminates against a
34 purchasing group or its members. In addition, an in-
35 surer is exempt from any law of this State which pro-
36 hibits providing, or offering to provide, to a pur-
37 chasing group or its members advantages based on
38 their loss and expense experience not afforded to
39 other persons with respect to rates, policy forms,
40 coverages or other matters. A purchasing group is
41 subject to all other applicable laws of this State.

1 §6098. Notice and registration requirements of pur-
2 chasing groups

3 1. Notice. A purchasing group which intends to
4 do business in this State shall, prior to doing busi-
5 ness, furnish notice to the superintendent who shall:

6 A. Identify the state in which the group is dom-
7 iciled;

8 B. Specify the lines and classifications of lia-
9 bility insurance which the purchasing group in-
10 tends to purchase;

11 C. Identify the insurance company from which the
12 group intends to purchase its insurance and the
13 domicile of that company;

14 D. Specify the method by which, and the person
15 or persons, if any, through whom insurance will
16 be offered to its members whose risks are resi-
17 dent or located in this State;

18 E. Identify the principal place of business of
19 the group; and

20 F. Provide such other information as may be re-
21 quired by the superintendent to verify that the
22 purchasing group is qualified under section 6093,
23 subsection 11.

24 2. Registration. The purchasing group shall
25 register with and designate the superintendent as its
26 agent solely for the purpose of receiving service of
27 legal documents or process, except that the require-
28 ments shall not apply in the case of a purchasing
29 group:

30 A. Which in any state of the United States:

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

32 (2) Is domiciled on and after October 27,
33 1986;

34 B. Which:

1 (1) Before October 27, 1986, purchased in-
2 insurance from an insurance carrier licensed
3 in any state; and

4 (2) Since October 27, 1986, purchased its
5 insurance from an insurance carrier licensed
6 in any state;

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

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

14 3. Application of law. Any purchasing group
15 which was doing business in this State prior to the
16 enactment of this Act shall within 30 days after the
17 effective date of this Act furnish notice to the su-
18 perintendent pursuant to the requirement of subsec-
19 tion 1 and shall comply with the requirements of sub-
20 section 2.

21 4. Notice of change. A purchasing group which
22 intends to do business or is doing business or is do-
23 ing business in this State shall notify the superin-
24 tendent as to any subsequent changes in any informa-
25 tion or other items provided pursuant to this sec-
26 tion.

27 §6099. Restrictions on insurance purchased by pur-
28 chasing groups

29 1. Purchase from risk retention group; insurer;
30 licensed agent or broker. A purchasing group may
31 purchase insurance from a risk retention group that
32 is chartered in a state or, in the case of product
33 liability or completed operations liability coverage,
34 that qualifies under section 6093, section 13, para-
35 graph C, subparagraph (2); from an insurer admitted
36 in this State in which the purchasing group is lo-
37 cated; or from a licensed agent or broker acting pur-
38 suant to the surplus lines laws and regulations of
39 that state.

1 2. Notice of nonprotected risk. A purchasing
2 group which obtains liability insurance from an in-
3 surer not authorized in this State or a risk reten-
4 tion group shall inform each of the members of the
5 purchasing group which have a risk resident or lo-
6 cated in this State that such risk is not protected
7 by an insurance insolvency guaranty fund in this
8 State, and that the risk retention group or the in-
9 surer may not be subject to all insurance laws and
10 regulations of this State.

11 §6100. Administrative and procedural authority re-
12 garding risk retention groups and purchasing
13 groups

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

30 §6101. Penalties

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

36 §6102. Duty of agents or brokers to obtain license

37 Any person acting, or offering to act, as an
38 agent or broker for a risk retention group or pur-
39 chasing group, which solicits members, sells insur-
40 ance coverage, purchases coverage for its members lo-
41 cated within the State or otherwise does business in

1 this State shall, before commencing any such activi-
2 ty, obtain an appropriate license from the superin-
3 tendent.

4 §6103. Binding effects of orders issued in the
5 United States District Court

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

13 §6104. Rules

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

18 Sec. 4. 36 MRS §2513-A is enacted to read:

19 §2513-A. Tax on premiums of risk retention groups

20 Each risk retention group, as defined in Title
21 24-A, section 6093, shall be liable for payment of
22 premium taxes with respect to direct business for
23 risks resident or located within this State at the
24 same rate and subject to the same interest, fines and
25 penalties for nonpayment as that applicable to autho-
26 rized insurers. Each risk retention group shall file
27 an annual report, on or before March 1st, with the
28 Superintendent of Insurance and the Treasurer of
29 State containing a sworn statement of the gross pre-
30 miums charged for coverage placed, and the gross re-
31 turn premiums on the insurance canceled, during the
32 year ending on the preceding December 31st. At the
33 time of filing the report, each risk retention group
34 shall pay to the Treasurer of State the applicable
35 percentage of the difference between the gross and
36 return premiums reported for the business transacted
37 during the year.

1

STATEMENT OF FACT

2 In 1981, Congress enacted the Product Liability
3 Risk Retention Act. This Act authorized the forma-
4 tion of product liability risk retention and purchas-
5 ing groups and placed certain regulatory functions
6 with respect to these groups on the states. The Sec-
7 ond Regular Session of the 112th Legislature enacted
8 the Maine Product Liability Risk Retention Act which
9 provides for the State's performance of the responsi-
10 bility placed upon it by Congress. Subsequently,
11 Congress amended the Federal Act to broaden its scope
12 to most forms of commercial liability insurance and
13 to greatly modify the role of the states in regula-
14 tion of risk retention and purchasing groups. This
15 new draft amends the State's law to coincide with the
16 federal law changes.

17 This new draft incorporates a number of clarify-
18 ing changes to the bill. Changes include the amend-
19 ment of the definition of "plan of operation or fea-
20 sibility study" and "risk retention group," clarifi-
21 cation of filing and tax responsibilities of risk re-
22 tention and purchasing groups, amendment of the pro-
23 vision relating to guaranty fund membership and the
24 addition of disclosure requirements for purchasing
25 groups.

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