

# MAINE STATE LEGISLATURE

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# 114th MAINE LEGISLATURE

## SECOND REGULAR SESSION - 1990

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Legislative Document

No. 2203

H.P. 1591

House of Representatives, January 18, 1990

Reported by Representative RYDELL from the Joint Standing Committee on Banking and Insurance.

Reference to the Joint Standing Committee on Banking and Insurance suggested and printing ordered under Joint Rule 19.

*Ed Pert*

EDWIN H. PERT, Clerk

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STATE OF MAINE

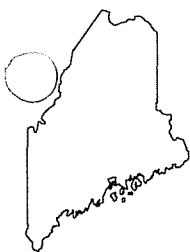
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IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND NINETY

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An Act to Create a State Insurance Fund.

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

2           Sec. 1. 24-A MRSA §401, as enacted by PL 1969, c. 132, §1, is  
4 amended to read:

6           **§401. "Mutual" insurer defined**

8           A "mutual" insurer is an incorporated insurer without  
10 permanent capital stock, and the governing body of which is  
12 elected by its policyholders or those policyholders specified in  
14 its charter, or by any reasonable combination of its  
16 policyholders, guaranty fund stockholders, or guaranty fund  
18 certificate holders, or by other reasonable method. The Maine  
State Insurance Fund created in Title 39, chapter 7, is deemed to  
be a "mutual" insurer when organized under this Title.

20           Sec. 2. 39 MRSA §2, sub-§7, as amended by PL 1977, c. 696,  
22 §395, is further amended to read:

24           7. **Workers' compensation insurance policy.** "Workers'  
26 compensation insurance policy" shall-mean means a policy in such  
28 a form as the Insurance Superintendent of Insurance approves,  
30 issued by any stock or mutual casualty insurance company or  
32 association that may now or hereafter be authorized to do  
34 business in this State or issued by the Maine State Insurance  
Fund, which in substance and effect guarantees the payment of the  
36 compensation, medical benefits and expenses of burial provided  
38 for, in such an installment, at such a time or times, and to such  
40 a person or persons and upon-such on conditions as in this Act  
42 provided. Whenever a copy of a policy is filed, such the copy  
44 certified by the Insurance Superintendent shall-be of Insurance  
46 is admissible as evidence in any legal proceeding wherein when  
48 the original would be admissible.

50           Sec. 3. 39 MRSA §2, sub-§8, as amended by PL 1977, c. 696,  
52 §396, is further amended to read:

54           8. **Insurance company.** "Insurance company" shall-mean means  
56 any casualty insurance company or association authorized to do  
58 business in this State, including the Maine State Insurance Fund,  
which may issue policies conforming to subsection 7. Whenever in  
this Act relating to procedure the words "insurance company" are  
used they shall apply only to cases in which the employer has  
secured the payment of compensation and other benefits by  
insuring such payment under an a workers' compensation insurance  
policy, instead of furnishing satisfactory proof of his the  
employer's ability to pay compensation and benefits direct  
directly to his the employer's employees.

60           No A insurance carrier shall-be is not qualified to issue an a  
62 workers' compensation insurance policy covering any employees  
working in this State unless it has and continuously maintains an

2 employee or claims agent within this State empowered to  
investigate claims arising under this chapter; sign agreements  
4 for the payment of compensation as provided by this chapter; and  
issue drafts or checks in payment of obligations arising under  
this chapter in amounts of at least \$1,000.

6 Sec. 4. 39 MRSA c. 7 is enacted to read:

8 **CHAPTER 7**

10 **MAINE STATE INSURANCE FUND**

12 **§251. Definitions**

14 As used in this chapter, unless the context otherwise  
16 indicates, the following terms have the following meanings.

18 **1. Board.** "Board" means the Board of Directors of the  
Maine State Insurance Fund.

20 **2. Fund.** "Fund" means the Maine State Insurance Fund  
22 created in section 252.

24 **3. Manager.** "Manager" means the Manager of the Maine State  
Insurance Fund.

26 **§252. Creation; purpose; organization of fund**

28 **1. Fund created.** The Maine State Insurance Fund is created  
30 as a nonprofit independent public corporation. The fund must be  
organized as a domestic mutual insurance company under Title 24-A.

32 **2. Purpose.** The fund is established for the purpose of  
34 providing workers' compensation insurance to employers of this  
State at the lowest possible cost and with the highest level of  
36 service consistent with reasonable actuarial principles and the  
financial integrity of the fund.

38 **3. Board.** The board shall consist of 7 members. In  
40 addition, the Commissioner of Labor and the manager shall be ex  
officio members.

42 **A.** The initial board shall be appointed by the Governor and  
44 shall consist of 7 members and the Commissioner of Labor.  
The Governor shall initially appoint one member for a  
46 one-year term, 2 members for 2-year terms, 2 members for  
3-year terms and 2 members for 4-year terms. After the  
48 terms of the initial board members expire, the Governor  
shall appoint one board member each year. The remaining 3  
50 board members shall be chosen by the fund's policyholders.

2 B. After the terms of the initial board members expire,  
4 each board member must represent a policyholder and may be  
6 an employee of a policyholder. At least 2 board members  
8 must represent private, for-profit enterprises. One of the  
10 4 members appointed by the Governor must represent the  
12 State. No member of the board may represent or be an  
14 employee of an insurance company.

16 C. Except as provided for initial appointments, each board  
18 member shall hold office for a 4-year term or until a  
20 successor is appointed and qualified. A vacancy is filled  
22 for the remainder of the unexpired term in the same manner  
24 as the former board member was selected.

26 D. The board shall annually elect a chair from among its  
28 members and any other officers it considers necessary for  
30 the performance of its duties.

32 E. Four members constitute a quorum of the board. No  
34 business may be acted on without a quorum being present.  
36 All board decisions must be made by majority vote of the  
38 board. The board shall set its own compensation, which may  
40 not exceed \$50 per day and expenses. The board shall adopt  
42 bylaws and shall determine the time and place of regular  
44 meetings and the method for calling special meetings.

46 4. Fund management. The board has exclusive management and  
48 control of the fund.

50 5. Powers and duties of board. The board has full power,  
52 authority and jurisdiction over the fund.

A. The board may perform all acts necessary or convenient  
in the exercise of any power, authority or jurisdiction over  
the fund, either in the administration of the fund or in  
connection with the insurance business to be carried on by  
it under this chapter, as fully and completely as the  
governing body of a private insurance carrier, to fulfill  
the purposes of this chapter.

B. The board shall discharge its duties with the care,  
skill, prudence and diligence under the circumstances that a  
prudent director, acting in a similar capacity and familiar  
with such matters, would use in conducting a similar  
enterprise and purpose.

C. The board may appoint investment managers to manage,  
acquire or dispose of any of the assets of the fund. An  
investment manager may be designated as an investment agent.

(1) An investment manager is any fiduciary designated  
by the board to manage, acquire or dispose of the

2 assets of the fund. The investment manager shall  
3 acknowledge in writing that it is a fiduciary under the  
4 fund.

6 (2) The board may delegate its investment powers to  
7 investment managers of the fund. The purchase or sale  
8 of any securities by an investment manager must be in  
9 the name selected by the board. The authority of an  
10 investment manager to purchase or sell the securities  
11 for the fund must be evidenced by written authority  
12 executed by the manager of the fund.

14 (3) The board may enter into agreements with an  
15 investment manager setting forth the investment powers  
16 and limitations of the investment manager. The board  
17 shall require an investment manager to keep the board  
18 currently informed of the nature and amount of the  
19 investments made for the fund by the investment  
20 manager. An investment manager is subject to the  
21 instructions of the board.

22 6. Manager. The fund is under the administrative control  
23 of the manager appointed by the board under section 255.

24 7. Personal liability excluded. The members of the board  
25 and officers or employees of the fund are not liable personally,  
26 either jointly or severally, for any debt or obligation created  
27 or incurred by the fund.

30 **§253. Power to insure**

32 1. Insure workers' compensation liability. The fund may  
33 insure an employer only against liability for compensation and  
34 benefits under this Title or under the federal Longshore and  
35 Harbor Workers' Compensation Act, 33 United States Code, Section  
36 901 (1927), as amended. The fund shall insure the State as an  
37 employer against its liability for compensation and benefits  
38 under this Title or under the federal Longshore and Harbor  
39 Workers' Compensation Act, 33 United States Code, Section 901  
40 (1927), as amended.

42 **§254. General powers**

44 1. Powers. For the purpose of exercising the specific  
45 powers granted in this chapter and effectuating the other  
46 purposes of this chapter, the fund may:

48 A. Sue and be sued;

50 B. Have a seal and alter it at will;

2 C. Make, amend and repeal rules relating to the conduct of  
the business of the fund;

4 D. Enter into contracts relating to the administration of  
the fund or claims against employers insured by the fund and  
6 for any other purpose consistent with this chapter;

8 E. Rent, lease, buy, pledge, mortgage or sell property in  
its own name and construct or repair buildings necessary to  
10 provide space for its operations;

12 F. Declare a dividend when there is an excess of assets  
over liabilities and minimum surplus requirements consistent  
14 with Title 24-A;

16 G. Pay medical expenses, rehabilitation expenses,  
compensation due claimants of insured employers, salaries  
18 and administrative and other expenses;

20 H. Hire personnel and set salaries and compensation. The  
state personnel laws do not apply to any of the employees of  
22 the fund or to the hiring of those employees. The State  
Employees Labor Relations Act, Title 26, chapter 9-B, does  
24 not apply to the fund and its employees;

26 I. Issue guaranty fund certificates, surplus notes or  
debentures payable out of surplus, borrow money and agree to  
28 pay any rate of return with respect to any guaranty fund  
certificate, surplus note, debenture or other instrument,  
30 calculated in any manner, and on such other terms as the  
board approves; and

32 J. Perform all other functions and exercise all other  
34 powers of a domestic mutual insurance company.

36 **§255. Manager**

38 1. Appointment; qualifications. The board shall appoint a  
manager of the fund to be in charge of the day-to-day operation  
40 of the fund. The manager must have proven successful experience  
as an executive at the general management level. The manager is  
42 entitled to compensation as set by the board and shall serve at  
the will of the board.

44 2. Bond. Before assuming the duties of the office, the  
46 manager must qualify by giving an official bond in an amount and  
with sureties approved by the board. The manager shall file the  
48 bond with the Secretary of State. The fund shall pay the premium  
for the bond from the account established in section 257.

50

2                   **§256. Manager's powers**

4                   Subject to the authority of the board and the provisions of  
6                   this chapter, the manager has the powers and duties prescribed in  
8                   this section.

10                   1. Safety inspections; loss control services. The manager  
12                   shall have safety inspections of risks made and advisory services  
14                   on safety and health measures furnished to employers to the  
16                   maximum extent possible, consistent with the financial integrity  
18                   of the fund.

20                   2. Disbursement of funds. The manager may act for the fund  
22                   in collecting and disbursing money necessary to administer the  
24                   fund and conduct the business of the fund.

26                   3. Abstract summary. The manager shall have an abstract  
28                   summary of any audit or survey conducted.

30                   4. Reinsurance. The manager may reinsure all or part of  
32                   any risk and may enter into agreements of reinsurance in the same  
34                   way and to the same extent as other insurance carriers.

36                   5. General authority. The manager may perform all acts  
38                   necessary in the exercise of any power, authority or jurisdiction  
40                   over the fund, either in the administration of the fund or in  
42                   connection with the insurance business to be carried on by the  
44                   fund under this chapter, including the establishment of premium  
46                   rates.

48                   **§257. Account**

50                   1. State Compensation Account. There is created and  
52                   established under the jurisdiction and control of the fund a  
54                   revolving account known as the "State Compensation Account." The  
56                   account may not lapse. The manager shall deliver all money  
58                   collected or received under this chapter to the account. The  
60                   money in the account may be used by the fund in carrying out its  
62                   purposes under this chapter.

64                   2. Property fund. All premiums and other money paid to the  
66                   fund, all property and securities acquired through the use of  
68                   money belonging to the fund, and all interest and dividends  
70                   earned on money belonging to the fund and deposited or invested  
72                   by the fund are the sole property of the fund and are used  
74                   exclusively for the operation and obligations of the fund. The  
76                   money of the fund is not state money. The property of the fund  
78                   is not state property.

80                   3. No state appropriation. The fund may not receive any  
82                   state appropriation at any time other than for the purpose of



2 initial capitalization and initial administrative expenses, as  
3 provided in section 261.

4 4. Investment of money in fund. The board may invest money  
5 in the State Compensation Account in investments permitted by law  
6 for a mutual insurance company. When selecting investments, the  
7 primary goal of the board shall be the financial integrity of the  
8 fund, but when investments of otherwise equal quality exist, the  
9 board shall give preference to any investment that would provide  
10 a direct benefit to the people of this State.

12 **§258. Application of state laws**

14 The fund is not considered a state agency or other  
15 instrumentality of the State for any purpose. The fund is  
16 subject to all state laws governing or applying to a private  
17 mutual insurance company, including, but not limited to, Title  
18 24-A, chapters 5 to 17. The insurance operations of the fund are  
19 subject to all those provisions of Title 24-A and of this Title  
20 applicable to a private insurance company that writes workers'  
21 compensation insurance, including, but not limited to, Title  
22 24-A, chapter 25, subchapter II-A. The Superintendent of  
23 Insurance has the same powers with respect to the board as the  
24 superintendent has with respect to a private workers'  
25 compensation insurer under Title 24-A and this Title. The fund  
26 is subject to the same income tax liability as a private mutual  
27 insurance company in this State under Title 36, Part 8.

28 **§259. Private independent insurance agents**

30 Private independent insurance agents licensed to sell  
31 workers' compensation insurance in this State may sell insurance  
32 coverage for the fund according to rules adopted by the board.  
33 The board shall by rule establish a schedule of commissions which  
34 the fund will pay for the services of an agent. This section  
35 does not prevent the fund from writing insurance coverage for  
36 employers without the assistance of private independent insurance  
37 agents.

38 **§260. Reports and information**

40 1. Annual report. The manager shall submit an annual  
41 report to the Governor and Legislature indicating the business  
42 done by the fund during the previous year and containing a  
43 statement of the resources and liabilities of the fund and any  
44 other information considered appropriate by the manager.

46 2. Statistical and actuarial data. The fund shall compile  
47 and maintain statistical and actuarial data related to the  
48 determination of proper premium rate levels, the incidence of  
49 work-related injuries, costs related to those injuries and any  
50 other data that the fund considers desirable. The fund shall  
51 compile and maintain statistical and actuarial data related to the  
52 determination of proper premium rate levels, the incidence of

2 provide this data to the Superintendent of Insurance, the Chair  
3 of the Workers' Compensation Commission and the Department of  
4 Labor upon request.

6 **§261. Funding**

8 **1. Fund becomes operational upon appropriation.** The fund  
9 becomes operational only upon the receipt of funds provided by  
10 appropriation of the Legislature. The board may defer acceptance  
11 of all or part of any appropriation to the time that it desires,  
12 but not more than 2 years from the date of the appropriation.  
13 Any amount accepted by the fund, plus interest at the rate of 8%  
14 a year calculated from the time that the fund accepts the  
15 appropriation, must be amortized by the Treasurer of State over a  
16 10-year period and must be repaid by the fund to the General Fund  
17 in equal installments at the end of each fiscal year. The  
18 Treasurer of State shall determine the date of the first payment,  
19 except that the fund does not begin repayment unless there exists  
20 sufficient earned surplus to comply with state law. Repayment  
21 then begins under this section when sufficient earned surplus  
22 exists.

24 **2. Guaranty fund certificates, surplus notes or**  
25 **debentures.** Money advanced to the fund under subsection 1 must  
26 be evidenced by guaranty fund certificates that permit the  
27 issuance of other guaranty fund certificates, surplus notes,  
28 debentures or other instruments with equal rights to payment out  
29 of surplus of the fund. In the event of any insufficiency,  
30 payments with respect to guaranty certificates may be made pro  
31 rata based on outstanding principal amounts of guaranty  
32 certificates, surplus notes, debentures or other instruments with  
33 equal rights. Any guaranty fund certificates or other  
34 instruments previously issued to evidence any money advanced to  
35 the fund under subsection 1 shall be exchanged by the Treasurer  
36 of State for restated certificates in form and substance  
37 consistent with this section in order to facilitate the issuance  
38 by the fund of other guaranty fund certificates, surplus notes,  
39 debentures or other instruments as provided in this section. Any  
40 amounts accrued but unpaid pursuant to the terms of any  
41 outstanding guaranty certificate, surplus note, debenture or  
42 other instrument are deemed to be money advanced for the purposes  
43 of this chapter.

44 **Sec. 5. State Government required to insure with fund.** When the  
45 Maine State Insurance Fund becomes operational upon the  
46 acceptance of a sufficient amount of a legislative appropriation  
47 under the Maine Revised Statutes, Title 39, section 261, the  
48 State shall purchase workers' compensation insurance from the  
49 Maine State Insurance Fund, covering all state employees. The  
50 insurance policy takes effect on the first day of the next fiscal  
51 year after the Maine State Insurance Fund becomes operational.  
52 Any state employee whose employment is terminated due to this

2 requirement shall be given preference in hiring for suitable  
positions within the Maine State Insurance Fund.

## 6 STATEMENT OF FACT

8 This bill is part of the legislation submitted as a result  
of a study on the feasibility of creating a state workers'  
10 compensation insurance fund, conducted by a subcommittee of the  
Joint Standing Committee on Banking and Insurance. This bill is  
12 recommended by a majority of the subcommittee. The bill  
establishes the Maine State Insurance Fund as an independent  
14 mutual insurance company. The purpose of the company is to  
provide workers' compensation insurance to the employers of this  
16 State at the lowest possible cost and with the highest possible  
level of services consistent with the financial integrity of the  
18 fund.

20 The structure of the Maine State Insurance Fund is patterned  
primarily after a similar state mutual insurance company  
22 established in Minnesota. The fund is not established as a state  
agency or instrumentality of the State in any way. It is created  
24 as an independent mutual insurance company and is subject to all  
other state laws governing mutual insurers to the same extent as  
26 any private mutual insurance company. The fund is under the  
direction of a board of directors, a majority of whom are  
28 appointed by the Governor. The remaining directors are selected  
by policyholders of the fund. All directors must represent a  
30 policyholder. The board of directors is authorized to hire  
investment managers to assist the board in investing the assets  
32 of the fund. The board of directors will select a manager who is  
responsible for the day-to-day direction of the operation of the  
34 fund. The fund is authorized, but not required, to use private  
insurance agents to sell workers' compensation insurance.

36 The fund retains only limited connections with the State.  
38 The fund is required to insure the State for workers'  
compensation liability. As soon as the fund becomes operational,  
40 the State is required to purchase workers' compensation coverage  
from the fund. The fund will become operational only when it  
42 receives sufficient initial capitalization from the State.  
Separate legislation submitted as a result of the study  
44 authorizes a bond issue in the amount of \$10,000,000 to be made  
available to the fund to cover its initial capitalization and  
46 administrative expenses. This money will be loaned to the fund,  
which can draw upon the full \$10,000,000 as it finds necessary  
48 over a period of 2 years. This allows the fund to reduce its  
interest costs by accepting the state money only as the fund  
50 requires it. The fund will repay this money to the State, under  
a schedule established by the Treasurer of State, through a  
52 portion of its earned surplus.

2           The intent of this bill is to ensure the availability of  
4 affordable workers' compensation insurance to the employers of  
6 this State, particularly small employers. State insurance funds  
8 in other states have proven to be effective vehicles to hold down  
10 the costs of workers' compensation insurance and to provide  
12 better services to employers who insure with those state funds.  
14 This bill ensures that a neutral, nonprofit alternative to the  
commercial insurance industry exists in the State to assist  
employers in obtaining workers' compensation insurance at a  
reasonable cost and assist the State in regulating and evaluating  
the performance of private workers' compensation insurance  
carriers.