

# MAINE STATE LEGISLATURE

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# 116th MAINE LEGISLATURE

FIRST REGULAR SESSION-1993

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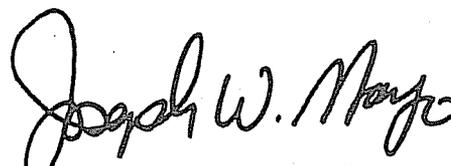
H.P. 677

House of Representatives, March 15, 1993

**An Act to Reduce the Cost of Residential Care Treatment.**

---

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

  
JOSEPH W. MAYO, Clerk

Presented by Representative MARSH of West Gardiner.  
Cosponsored by Representatives: KUTASI of Bridgton, MARSH of West Gardiner, PINEAU of Jay, RAND of Portland, Senator: McCORMICK of Kennebec.

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

2  
3       **Sec. 1. 5 MRSA §1728-A, sub-§1**, as amended by PL 1991, c. 376,  
4       §21, is further amended to read:

6       **1. Duties.** The director shall provide insurance advice and  
7       services for the State Government and any department or agency  
8       ~~thereof of State Government~~ for all forms of insurance, except  
9       for those departments or agencies and those types of insurance  
10      otherwise provided for by law. The director shall provide  
11      insurance advice and services for family foster homes, as defined  
12      in Title 22, section 8101, subsection 3; respite care providers,  
13      as defined in Title 34-B, section 6201, subsection 2-A; group  
14      homes for persons receiving services from the Department of  
15      Mental Health and Mental Retardation, Bureau of Mental  
16      Retardation under Title 34-B, chapter 5 and from the Department  
17      of Mental Health and Mental Retardation, Bureau of Children with  
18      Special Needs under Title 34-B, chapter 6; specialized children's  
19      homes, as defined in Title 22, section 8101, subsection 5; the  
20      Casco Bay Island Transit District created by Private and Special  
21      Law 1981, chapter 22; and commercial applicators and spray  
22      contracting firms that are required to provide proof of financial  
23      responsibility in custom application pursuant to Title 22,  
24      section 1471-D, subsection 4, and private applicators as defined  
25      in Title 22, section 1471-C, subsection 22, who may be required  
26      to provide proof of insurance. The director is responsible for  
27      the acquisition and administration of all insurance purchased by  
28      the State, including the authority to purchase, on a competitive  
29      bid basis, insurance for the State for automobile, fire,  
30      liability and any other type of coverage necessary to protect the  
31      State from financial loss. The director may enter into contracts  
32      for various types of claims management services in order to  
33      ensure the most economically advantageous insurance protection in  
34      the operation of the State's insurance coverage program. In  
35      these regards, the director has the following duties:

36           A. To review annually the entire subject of insurance as it  
37           applies to all state property and activities and other  
38           persons pursuant to this section, and to provide to the  
39           ~~commissioner~~ Commissioner of Administrative and Financial  
40           Services a statement of its activities during the year  
41           ending the preceding June 30th. This report shall must  
42           include:

- 43                   (1) An evaluation of the state insurance program;
- 44                   (2) A complete statement of all types and costs of  
45                   insurance in effect;
- 46                   (3) Names of agents and companies of record; and
- 47                   (4) Names of insurance carriers licensed in the State;
- 48                   (5) Names of insurance carriers licensed in other States;
- 49                   (6) Names of insurance carriers licensed in other countries;
- 50                   (7) Names of insurance carriers licensed in other countries;

2 (4) Such other matters as the director determines to  
3 be appropriate and necessary or as the ~~commissioner~~  
4 Commissioner of Administrative and Financial Services  
5 may request;

6

7 B. To recommend to the ~~commissioner~~ Commissioner of  
8 Administrative and Financial Services such insurance  
9 protection as the director ~~may deem~~ considers necessary or  
10 desirable for the protection of all state property or  
11 activities or other insureds under this section;

12

13 C. Pursuant to programs approved by the ~~commissioner~~  
14 Commissioner of Administrative and Financial Services, to  
15 provide insurance protection for state property and  
16 liability insurance in accordance with the Maine Tort Claims  
17 Act, Title 14, section 8116, and premises liability, when  
18 required by a state lease or private property approved by  
19 the Attorney General, by self-insured retention, as  
20 provided, or purchase of insurance from companies or agents  
21 licensed to do business in this State, or by both, to effect  
22 the best possible contracts as to services, coverages and  
23 costs. The purchase of insurance under this section normally  
24 shall must be made upon competitive bidding, except that the  
25 director may, in appropriate circumstances, purchase  
26 insurance by negotiation.

27

28 In the event of the purchase of insurance upon competitive  
29 bidding by qualified insurers, the director shall announce  
30 the low bid at a meeting advertised for the opening of bids,  
31 which, when approved by the ~~commissioner~~, ~~shall constitute~~  
32 Commissioner of Administrative and Financial Services,  
33 constitute an award of a contract of insurance;

34

35 D. To determine and review the values of property in which  
36 the State has an insurable or legal interest and recommend  
37 limits and types of insurance protection for that property;

38

39 E. To establish and promote safety and other loss  
40 prevention programs;

41

42 F. To receive and, with the assistance of the Attorney  
43 General, administer all claims for personal injury and  
44 property damage against the State; and

45

46 G. With the assistance of the Attorney General, to pursue  
47 all claims against 3rd parties in all cases in which the  
48 State may be subrogated to the rights of injured employees  
49 or where damage to state property may have resulted from the  
50 negligence of a 3rd party; and

2           H. To administer the fund established by section 1737.

4           **Sec. 2. 5 MRSA §1728-A, sub-§5** is enacted to read:

6           5. Actuarial services. The director shall retain each  
8           fiscal year the services of a member of the American Academy of  
10           Actuaries who is qualified as a casualty and loss reserve  
12           specialist as defined by the National Association of Insurance  
14           Commissioners and who is a member of a nationally recognized  
16           actuarial firm to provide advice in the development of insurance  
18           premiums charged for the succeeding fiscal year by the Bureau of  
20           General Services and make recommendations to the Commissioner of  
22           Administrative and Financial Services and the director regarding  
24           the level of premium and reserves necessary to protect the fund  
26           established by section 1737. Within 30 days of receiving the  
28           report of the actuary, the director shall consult with the  
          Superintendent of Insurance about the recommended levels of  
          premiums and reserves. Within 60 days of receiving the  
          recommendations from the actuarial firm, the director shall  
          report to the Department of Professional and Financial  
          Regulation, Bureau of Insurance and to the joint standing  
          committee of the Legislature having jurisdiction over banking and  
          insurance matters stating the recommended levels of premium and  
          reserves, the director's implementation of those levels and any  
          reasons for deviations from the recommendations in order to make  
          the state-administered fund substantially actuarially sound.

30           **Sec. 3. 5 MRSA §1731**, as repealed and replaced by PL 1991, c.  
          591, Pt. III, §11, is amended to read:

32           **§1731. Reserve fund for self-insured retention losses**

34           A reserve fund, in this chapter called the "self-insurance  
36           fund," is created to indemnify the State or the State's  
38           designated payee for self-insured retention losses and related  
40           loss adjustment expenses from those perils insured against under  
42           a deductible or self-insured retention program, as recommended by  
44           the director and approved by the ~~commissioner~~ Commissioner of  
46           Administrative and Financial Services. With the approval of the  
48           commissioner, the self-insurance fund may be used for loss  
          prevention programs administered by either the ~~Risk-Management~~  
          Bureau of General Services or the Bureau of Human  
          Resources. The total amount of the self-insurance fund provided  
          for loss prevention programs in any given year may not exceed 5%  
          of the self-insurance fund as of July 1st of that fiscal year.  
          The self-insurance fund is a continuing fund and may not lapse.  
          Funds provided from the ~~reserve~~ self-insurance fund to the Bureau  
          of Human Resources are similarly nonlapsing and are carried

2 forward through the Bureau of Human Resources' Dedicated Revenue  
Account.

4 As approved by the ~~commissioner~~ Commissioner of  
6 Administrative and Financial Services, up to 15% of the amount of  
the self-insurance fund as of July 1st of each fiscal year may be  
8 used to ensure the prompt payment of workers' compensation claims  
for state agencies as required by law. Any funds so transferred  
10 shall must be repaid to the self-insurance fund by use of a  
written agreement which that specifies reimbursement within the  
same biennium in which the transfer was made.

12 ~~With the approval of the commissioner, up to 15% of the~~  
14 ~~unreserved amount of the fund as of July 1, 1989, may be used for~~  
16 ~~the initial capitalization of the Workers' Compensation~~  
~~Management Fund established by section 1833.~~

18 **Sec. 4. 5 MRSA §1731-A**, as amended by PL 1989, c. 857, §21,  
is further amended to read:

20 **§1731-A. Limitation and provision for stop-loss insurance**

22 Deductible or self-insured retention provisions hereunder  
24 may not exceed 25% of the self-insurance fund as of July 1st of  
the current fiscal year per occurrence with respect to any risk  
26 of loss.

28 The director may purchase such the reinsurance of the  
deductible or self-insured retentions hereunder as he ~~may deem~~  
30 the director considers necessary or desirable. The director may  
purchase such the reinsurance protection from companies or agents  
32 licensed or approved by the Superintendent of Insurance to do  
business in the State.

34 **Sec. 5. 5 MRSA §1732**, as amended by PL 1991, c. 780, Pt. Y,  
36 §52, is further amended to read:

38 **§1732. Administration**

40 The self-insurance fund ~~must--be~~ is administered by the  
Commissioner of Administrative and Financial Services. The  
42 commissioner shall deposit the self-insurance fund with the  
Treasurer of State for investment. All proceeds of such that  
44 investment accrue to the self-insurance fund.

46 **Sec. 6. 5 MRSA §1733**, as amended by PL 1989, c. 857, §22, is  
further amended to read:

48 **§1733. Capitalization of the fund**

2           The self-insurance fund is capitalized by legislative  
3           appropriations, payments from state departments and agencies,  
4           investment income accruing to the self-insurance fund and by such  
5           other means as the Legislature may approve.

6  
7           ~~Appropriations--and--payments--to--the--fund--in--respect--to~~  
8           ~~general--fund--departments--and--agencies--may--not--exceed--an--amount~~  
9           ~~equal--to--the--difference--between--the--premium--for--insurance~~  
10           ~~proposed--to--be--purchased--and--the--premium--for--mandatory--deductible~~  
11           ~~or--full--insurance--coverage--plus--a--pro--rata--share--of--the--cost--of~~  
12           ~~the--stop--loss--insurance. In any instance in which the State has a~~  
13           ~~100%--self--insured--retention,--the--premium--must--be--that--for--full~~  
14           ~~insurance--coverage--adjusted--for--any--mandatory--deductible.~~

15           ~~All--other--state--departments--and--agencies,--except--those~~  
16           ~~specifically--excluded--by--law,--shall--pay--to--the--fund--premiums~~  
17           ~~Payments to the self-insurance fund from state departments and~~  
18           ~~agencies are calculated on a pro rata basis as determined by the~~  
19           ~~director and based on the prior claims experience of the~~  
20           ~~departments or agencies. In any instance in which the State has a~~  
21           ~~100%--self--insured--retention,--the--premium--must--be--that--for--full~~  
22           ~~insurance--coverage--adjusted--for--any--mandatory--deductible.~~

23  
24           Whenever possible, all premiums payments referred to in this  
25           section are computed on the basis of rates promulgated by a  
26           recognized rating authority.

27  
28           **Sec. 7. 5 MRSA §1734**, as amended by PL 1983, c. 349, §16, is  
29           further amended to read:

30  
31           **§1734. Exemption from requirements of Title 24-A**

32  
33           The self-insurance fund shall may not exceed 2% of the then  
34           current value of all state-insured or self-insured retention  
35           property protected by the self-insurance fund as determined by  
36           the director.

37  
38           If the self-insurance fund reaches or exceeds the maximum  
39           amount specified in this section, payments to the self-insurance  
40           fund, as specified in section 1733, shall must cease and any  
41           excess shall must be transferred into the General Fund not later  
42           than the end of the first quarter of the next fiscal year.

43  
44           Payments to the self-insurance fund shall may not begin  
45           again until such time as the amount in the self-insurance fund  
46           drops below the maximum amount specified in this section.

47  
48           **Sec. 8. 5 MRSA §1735**, as amended by PL 1983, c. 349, §17, is  
49           further amended to read:

2       **§1735. Depletion of fund**

4           In the event that payments from the self-insurance fund  
6       should reduce it below \$1,000,000, the commissioner shall  
8       recommend to the Legislature that funds be appropriated to  
      restore the self-insurance fund up to the maximum amount ~~at~~ the  
      self-insurance fund had previously attained.

10           **Sec. 9. 5 MRSA §1736**, as amended by PL 1989, c. 857, §23, is  
      further amended to read:

12           **§1736. Payment of losses**

14           Pursuant to the recommendation of the director, the  
16       ~~commissioner~~ Commissioner of Administrative and Financial  
18       Services shall cause payments from the self-insurance fund or  
      proceeds of insurance purchased in accordance with this chapter,  
20       or both, to be made available for repair or replacement of  
      insured property and payment of losses and loss adjustment  
      expenses.

22           **Sec. 10. 5 MRSA §§1737 and 1738** are enacted to read:

24           **§1737. State-administered insurance fund**

26           **1. Creation of state-administered fund.** A  
28       state-administered insurance fund, in this chapter called the  
30       "state-administered fund," is created to provide insurance  
32       coverage in instances when the State or the director is directed  
34       or authorized to offer insurance or insurance advice or services  
36       to persons and entities other than the State or state departments  
      and agencies. The state-administered fund contains such reserves  
      as the Commissioner of Administrative and Financial Services  
      determines are actuarially sufficient to meet anticipated claims  
      against the state-administered fund and to pay administrative  
      expenses specifically related to the state-administered fund.

38           **2. Eligibility for participation in state-administered**  
40       fund. The state-administered fund must offer insurance coverage  
42       to persons or entities other than state departments or agencies  
44       in those instances when the State or the director is statutorily  
46       directed to provide insurance or insurance advice or services.  
48       The state-administered fund must also offer insurance coverage in  
50       those instances when the Commissioner of Administrative and  
      Financial Services determines that it is appropriate to do so  
      based upon consideration of the risks involved and the  
      governmental objectives that would be served by that coverage.  
      The Commissioner of Administrative and Financial Services has the  
      discretion to include state departments or agencies within the

2 coverage of the state-administered fund instead of the  
4 self-insurance fund if the Commissioner of Administrative and  
6 Financial Services determines that the inclusion of those  
8 departments or agencies is necessary to allow the  
10 state-administered fund as a whole to offer insurance at  
12 affordable rates, consistent with the actuarial soundness of the  
14 state-administered fund.

16 **3. Rejection of risk.** When the director determines that a  
18 risk may be prejudicial to the state-administered fund, the  
20 director may refuse to include that risk in the  
22 state-administered fund until such time as hazards of the risk  
24 have been removed or ameliorated to a satisfactory degree.

26 **4. Capitalization of state-administered fund.** The  
28 state-administered fund must be capitalized by payments from  
30 persons or entities insured by the state-administered fund,  
32 payments by insurance or reinsurance companies and by such other  
34 means as the Legislature approves. In establishing the initial  
36 capitalization of the state-administered fund, the Commissioner  
38 of Administrative and Financial Services shall transfer from the  
40 self-insurance fund to the state-administered fund an amount  
42 determined to be the existing balance attributable to any risks  
44 formerly covered by the self-insurance fund that will be covered  
46 in the future by the state-administered fund. The Commissioner  
48 of Administrative and Financial Services shall deposit the  
state-administered fund with the Treasurer of State for  
investment. All proceeds of that investment accrue to the  
state-administered fund.

**5. Payments from state-administered fund.** Payments from  
the state-administered fund may be made to pay or settle claims  
insured by the state-administered fund and to pay administrative  
expenses and adjustment and defense costs specifically related to  
the state-administered fund. The rights of any persons or  
entities insured by the state-administered fund are limited to  
the extent specified in the contracts of insurance entered into  
between those persons or entities and the director. Persons or  
entities insured by the state-administered fund do not have any  
right of recovery except against the assets of the  
state-administered fund and those persons or entities do not have  
recourse against the General Fund or against any other assets of  
the State.

**6. Excess insurance.** The state-administered fund may  
purchase excess insurance so as to limit its exposure as  
recommended by the Commissioner of Administrative and Financial  
Services.

2 7. Powers and duties of director. In connection with the  
3 state-administered fund, the director may:

4 A. Establish and promote safety and loss prevention  
5 programs;

6 B. Administer the adjustment of claims against the  
7 state-administered fund or claims against parties insured by  
8 the state-administered fund;

9 C. Obtain legal and other services necessary to administer  
10 or defend claims against persons or entities insured by the  
11 state-administered fund or pursue claims against 3rd parties  
12 in cases when the entities insured may be subrogated to the  
13 rights of injured employees or when damage to an insured  
14 entity's property may have resulted from the negligence of a  
15 3rd party;

16 D. Establish rates for insurance coverage by the  
17 state-administered fund so that the state-administered fund  
18 operates on an actuarially sound basis; and

19 E. Establish deductibles or retentions determined necessary  
20 for the efficient operation of the state-administered fund.

21 8. Limitation on use of state-administered fund. The  
22 state-administered fund may be used for insurance purposes in  
23 accordance with this section only and the assets of the  
24 state-administered fund may not be transferred to meet any  
25 budgetary shortfall or to pay any uninsured expenses.

26 9. No expansion of liability under the Maine Tort Claims  
27 Act. No insurance coverage provided by the state-administered  
28 fund to any person, entity, department or agency that is a  
29 "governmental agency" as defined by Title 14, section 8102,  
30 subsection 2 or an "employee" as defined by Title 14, section  
31 8102, subsection 1 may increase the potential liability of that  
32 person, entity, department or agency beyond the limits set forth  
33 in Title 14, chapter 741.

34 10. Assistance from the Bureau of Insurance. The  
35 Department of Professional and Financial Regulation, Bureau of  
36 Insurance shall provide assistance to the director upon the  
37 request of the director and upon a determination by the  
38 Superintendent of Insurance that the Bureau of Insurance is  
39 capable of providing the requested assistance.

40 §1738. Exemption from requirement of Title 24-A

2 In performing the functions authorized by this chapter, the  
3 self-insurance fund, the state-administered fund, the  
4 Commissioner of Administrative and Financial Services and the  
5 director are not subject to Title 24-A.

6 **Sec. 11. 22 MRSA §8101, sub-§5,** as enacted by PL 1981, c. 260,  
7 §4, is amended to read:

8  
9 **5. Specialized children's home.** "Specialized children's  
10 home" means a children's home where care is provided to no more  
11 than 4 moderately to severely handicapped children by a caretaker  
12 who is specifically educated and trained to provide for the  
13 particular needs of each child placed. The total number of  
14 children in a specialized children's home may not exceed 4,  
15 including the caretaker's legal children under 16 years of age,  
16 with no more than 2 children under the age of 2. A specialized  
17 children's home licensed by the Department of Human Services is  
18 eligible for insurance pursuant to Title 5, section 1728-A. In  
19 any action for damages against a specialized children's home  
20 insured pursuant to Title 5, section 1728-A for damages covered  
21 under that policy, the claim for and award of those damages,  
22 including costs and interest, may not exceed \$300,000 for any and  
23 all claims arising out of a single occurrence.

24  
25 **Sec. 12. 34-B MRSA §5201, sub-§4,** as enacted by PL 1983, c.  
26 459, §7, is amended to read:

27  
28 **4. Community-based services.** Ensuring that mentally  
29 retarded persons residing in community residential facilities,  
30 including nursing homes, boarding homes, foster homes, group  
31 homes or halfway houses licensed by the Department of Human  
32 Services are provided, ~~insofar~~ as far as possible, with  
33 residential accommodations and access to habilitation services  
34 appropriate to their needs. A group home licensed by the  
35 Department of Human Services is eligible for insurance pursuant  
36 to Title 5, section 1728-A. In any action for damages against a  
37 group home insured pursuant to Title 5, section 1728-A for  
38 damages covered under that policy, the claim for and award of  
39 those damages, including costs and interest, may not exceed  
40 \$300,000 for any and all claims arising out of a single  
41 occurrence; and

#### 42 43 44 **STATEMENT OF FACT**

45 This bill adds the provision of insurance advice and  
46 services for group homes for children and persons with mental  
47 retardation and specialized children's homes to the insurance  
48 responsibilities of the Bureau of General Services.  
49  
50

2 This bill divides the self-insurance fund administered by  
3 the Bureau of General Services into 2 funds. One fund would be  
4 for state property and one, designated in this bill as the  
5 "state-administered fund" would be for nonstate entities.  
6 Recovery against the state-administered fund is limited by  
7 contract provision and is limited to the assets of the fund as a  
8 maximum. The state-administered fund must be actuarially sound  
9 and may purchase excess insurance. The assets may be used only  
10 for insurance purposes. Provision of insurance through the  
11 state-administered fund does not expand tort liability beyond the  
12 limits of the Maine Tort Claims Act.

13  
14 The bill makes several technical changes to the risk  
15 management laws to separate provisions that would apply to the  
16 self-insurance fund and those that would apply to the  
17 state-administered fund. In performing the functions of both  
18 funds, the Commissioner of Administrative and Financial Services  
19 and the Director of the Bureau of General Services are not  
20 subject to insurance regulations under the Maine Revised  
Statutes, Title 24-A.