

MAINE STATE LEGISLATURE

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116th MAINE LEGISLATURE

FIRST REGULAR SESSION-1993

Legislative Document

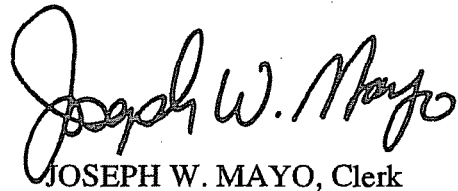
No. 1118

H.P. 832

House of Representatives, April 1, 1993

An Act to Allow Elementary and Secondary Schools to Obtain Insurance Coverage through the Risk Management Division within the Bureau of General Services.

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


JOSEPH W. MAYO, Clerk

Presented by Representative CHASE of China.
Cosponsored by Representative: MITCHELL of Vassalboro.

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:

- 44 (1) An evaluation of the state insurance program;
- 46 (2) A complete statement of all types and costs of
48 insurance in effect;
- 50 (3) Names of agents and companies of record; and

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

6

7 B. To recommend to the ~~commissiener~~ Commissioner of
8 Administrative and Financial Services such insurance
9 protection as the director may deem consider 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 ~~commissiener~~
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 ~~commissiener~~ Commissioner of
32 Administrative and Financial Services, shall--constitute
33 constitutes 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-§§1-A and 5** are enacted to read:

6 1-A. Additional duties. The director shall provide
7 insurance advice and services for all lines of property and
8 casualty insurance for school administrative units and for
9 private schools approved for tuition purposes when more than 60%
10 of the students are publicly funded.

12 5. Actuarial services. Each fiscal year the director shall
13 retain the services of a member of the American Academy of
14 Actuaries who is qualified as a casualty and loss reserve
15 specialist as defined by the National Association of Insurance
16 Commissioners and who is a member of a nationally recognized
17 actuarial firm to provide advice in the development of insurance
18 premiums charged for the succeeding fiscal year by the risk
19 management division within the Bureau of General Services and
20 make recommendations to the Commissioner of Administrative and
21 Financial Services and the director regarding the levels of
22 premiums and reserves necessary to protect the fund established
23 by section 1737. Within 30 days of receiving the report of the
24 actuary, the director shall consult with the Superintendent of
25 Insurance about the recommended levels of premiums and reserves.
26 Within 60 days of receiving the recommendations from the
27 actuarial firm, the director shall report to the Department of
28 Professional and Financial Regulation, Bureau of Insurance and to
29 the joint standing committee of the Legislature having
30 jurisdiction over banking and insurance matters stating the
31 recommended levels of premiums and reserves, the director's
32 implementation of those levels and any reasons for deviations
33 from the recommendations in order to make the fund substantially
34 actuarially sound.

36 **Sec. 3. 5 MRSA §1731, as amended by PL 1991, c. 591, Pt. III,**
37 **§11, is further amended to read:**

38 **§1731. Reserve fund for self-insured retention losses**

39 A reserve fund, in this chapter called the "self-insurance
40 fund," is created to indemnify the State or the State's
41 designated payee for self-insured retention losses and related
42 loss adjustment expenses from those perils insured against under
43 a deductible or self-insured retention program, as recommended by
44 the director and approved by the ~~commissioner~~ Commissioner of
45 Administrative and Financial Services. With the approval of the
46 commissioner, the self-insurance fund may be used for loss
47 prevention programs administered by either the Risk-Management
48 Division ~~risk management division~~ within the Bureau of General
49 Services.

2 Services or the Bureau of Human Resources. The total amount of
4 the self-insurance fund provided for loss prevention programs in
6 any given year may not exceed 5% of the self-insurance fund as of
8 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 forward through the Bureau
of Human Resources' Dedicated Revenue Account.

10 As approved by the ~~commissioner~~ Commissioner of
12 Administrative and Financial Services, up to 15% of the amount of
14 the self-insurance fund as of July 1st of each fiscal year may be
16 used to ensure the prompt payment of workers' compensation claims
18 for state agencies as required by law. Any funds so transferred
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.

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

24 **Sec. 4. 5 MRSA §1731-A, first ¶**, as amended by PL 1989, c. 857,
26 §21, is further amended to read:

28 Deductible or self-insured retention provisions hereunder
30 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
of loss.

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

36 **§1732. Administration**

38 The self-insurance fund must be administered by the
40 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
investment accrue to the self-insurance fund.

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

48 **§1733. Capitalization of self-insurance fund**

The self-insurance fund is capitalized by legislative
appropriations, payments from state departments and agencies,

2 investment income accruing to the self-insurance fund and by such
other means as the Legislature may approve.

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

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

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

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

28 **§1734. Exemption from requirements of Title 24-A**

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

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

38 Payments to the self-insurance fund shall may not begin
39 again until such time as the amount in the self-insurance fund
40 drops below the maximum amount specified in this section.

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

43 **§1735. Depletion of self-insurance fund**

2 In the event that payments from the self-insurance fund
3 should reduce it below \$1,000,000, the ~~commissiøner~~ Commissioner
4 of Administrative and Financial Services shall recommend to the
5 Legislature that funds be appropriated to restore the
6 self-insurance fund up to the maximum amount it had previously
7 attained.

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

10 **§1736. Payment of losses**

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

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

19 **§1737. State-administered insurance fund**

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

31 **2. Eligibility for participation in state-administered**
32 **fund.** The state-administered fund must offer insurance coverage
33 to persons or entities other than state departments or agencies
34 in those instances when the State or the director is statutorily
35 directed to provide insurance or insurance advice or services.
36 The state-administered fund must also offer insurance coverage in
37 those instances when the Commissioner of Administrative and
38 Financial Services determines that it is appropriate to do so
39 based on consideration of the risks involved and the governmental
40 objectives that would be served by that coverage. The
41 commissioner has the discretion to include state departments or
42 agencies within the coverage of the state-administered fund
43 instead of the self-insurance fund if the commissioner determines
44 that the inclusion of those departments or agencies is necessary
45 and the State or the director is directed to do so.

1 to allow the state-administered fund as a whole to offer
2 insurance at affordable rates, consistent with the actuarial
soundness of the state-administered fund.

4
6 3. Rejection of risk. When the director determines that a
risk may be prejudicial to the state-administered fund, the
director may refuse to include that risk in the
8 state-administered fund until such time as hazards of the risk
have been removed or ameliorated to a satisfactory degree.

10
12 4. Capitalization of state-administered fund. The
state-administered fund must be capitalized by payments from
14 persons or entities insured by the fund, payments by insurance or
reinsurance companies and by such other means as the Legislature
16 approves. In establishing the initial capitalization of the
state-administered fund, the Commissioner of Administrative and
18 Financial Services shall transfer from the self-insurance fund to
the state-administered fund an amount determined to be the
20 existing balance attributable to any risks formerly covered by
the self-insurance fund that will be covered in the future by the
state-administered fund. The commissioner shall deposit the
22 state-administered fund with the Treasurer of State for
investment. All proceeds of that investment accrue to the
24 state-administered fund.

26
28 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
30 expenses and adjustment and defense costs specifically related to
the state-administered fund. The rights of any persons or
32 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
34 entities insured by the state-administered fund do not have any
right of recovery except against the assets of the
36 state-administered fund, and such persons or entities do not have
recourse against the General Fund or against any other assets of
38 the State.

40
42 6. Excess insurance. The state-administered fund may
purchase excess insurance so as to limit its exposure as
44 recommended by the Commissioner of Administrative and Financial
Services.

46
7. Powers and duties of director. In connection with the
state-administered fund, the director may:

48 A. Establish and promote safety and loss prevention
50 programs;

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

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

22 D. Establish rates for insurance coverage by the
24 state-administered fund so that the state-administered fund
26 operates on an actuarially sound basis; and

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

32 8. Limitation on use of state-administered fund. The
34 state-administered fund may be used only for insurance purposes
36 in accordance with this section and the assets of the
38 state-administered fund may not be transferred to meet any
40 budgetary shortfall or to pay any uninsured expenses.

42 9. No expansion of liability under the Maine Tort Claims
44 Act. An insurance coverage provided by the state-administered
46 fund to any person, entity, department or agency that is a
48 governmental entity as defined by Title 14, section 8102,
50 subsection 2 or an employee as defined by Title 14, section 8102,
subsection 1 may not increase the potential liability of that
person, entity, department or agency beyond the limits set forth
in Title 14, chapter 741.

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

42 **§1738. Exemption from requirement of Title 24-A**

44 In performing the functions authorized by this chapter, the
46 self-insurance fund, the state-administered fund, the
48 Commissioner of Administrative and Financial Services and the
50 director are not subject to Title 24-A.

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

2 This bill includes the provision of insurance advice and
4 services for group homes for children and persons with mental
retardation and specialized children's homes in the insurance
responsibilities of the risk management division.

6
8 The bill makes several technical changes to the risk
management laws to separate provisions that would apply to the
self-insurance fund and those that would apply to the
10 state-administered fund. In performing the functions of both
funds, the Commissioner of Administrative and Financial Services
12 and the Director of the Bureau of General Services are not
subject to insurance regulations under Title 24-A.