

# MAINE STATE LEGISLATURE

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INSURANCE AND FINANCIAL SERVICES

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
121ST LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 629, L.D. 852, Bill, "An Act To Promote Alternatives in Group Self-insurance"

Amend the bill in section 1 in the 3rd blocked paragraph from the end in the 9th line (page 1, line 50 in L.D.) by striking out the following: "as" and inserting in its place the following: 'to the extent'

Further amend the bill in section 1 in subsection 4 in the 3rd blocked paragraph from the end in the 8th line from the end (page 2, line 7 in L.D.) by striking out the following: "injury" and inserting in its place the following: 'injury occurrence'

Further amend the bill by striking out all of section 2 and inserting in its place the following:

'Sec. 2. 39-A MRSA §403, sub-§4-A is enacted to read:

4-A. Group self-insurance reinsurance account. As an alternative to obtaining a reinsurance contract providing coverage against losses arising out of one occurrence, a group self-insurer may participate in a group self-insurance reinsurance account, referred to in this subsection as "an account," as provided in this subsection. More than one account may be established pursuant to this subsection. Each account established pursuant to this subsection is an independent entity and an instrumentality of the State, but the debts and liabilities of an account are not debts and liabilities of the State.

COMMITTEE AMENDMENT

2 A. Any group self-insurer that is subject to joint and  
3 several liability pursuant to subsection 4, paragraph F may  
4 apply to reinsure through an account.

6 (1) Upon the petition of 4 or more authorized group  
7 self-insurers, the Superintendent of Insurance may  
8 approve an account for the deposit of funds in lieu of  
9 reinsurance.

10 (2) The account must indemnify its participating group  
11 self-insurer members for claims incurred during the  
12 account's operation. The purpose of the account is to  
13 accumulate funds to provide coverage against losses  
14 arising out of one occurrence in excess of \$500,000 or  
15 such other amounts as may be permitted or required for  
16 particular members consistent with the plan of  
17 operation established pursuant to paragraph B.

18 (3) A group self-insurer is deemed to be a member of  
19 the account for reinsurance coverage for purposes of a  
20 claim if the group self-insurer is a member of the  
21 account when an injury occurs or a covered occupational  
22 disease loss is incurred.

23 (4) A group self-insurer that reinsures through an  
24 account shall continue to make payments into that  
25 account in accordance with the plan of operation  
26 established pursuant to paragraph B.

27 (5) A group self-insurer's participation in an account  
28 is considered as a component of the group  
29 self-insurer's renewal application. A group  
30 self-insurer's membership in an account is considered  
31 adequate protection against losses arising out of a  
32 single occurrence unless the Superintendent of  
33 Insurance determines, after considering the financial  
34 condition and catastrophic loss exposure of both the  
35 group self-insurer and the account, that it is  
36 necessary to maintain additional reinsurance  
37 protection, maintain a lower self-insured retention  
38 level or provide some other form of additional  
39 security, singly or in combination.

40 B. An account must operate in accordance with a plan of  
41 operation established by the group self-insurer members and  
42 approved by the Superintendent of Insurance.

43 (1) Those group self-insurers creating an account  
44 shall submit to the Superintendent of Insurance a plan  
45 of operation and any amendments to it that are  
46 approved by the Superintendent of Insurance.

2 necessary to ensure the fair, reasonable and equitable  
3 administration of the account. The plan of operation  
4 is effective upon approval by the superintendent. Any  
5 amendments subsequent to the plan's initial approval  
6 must be submitted to the superintendent by the plan's  
7 board of directors and are effective upon approval by  
8 the superintendent.

9 (2) The plan of operation must:

10 (a) Create a board of directors and initial  
11 bylaws, including the terms and conditions of  
12 board membership and the manner by which board  
13 members are initially appointed and are replaced  
14 when vacancies occur;

15 (b) Establish the procedures by which all the  
16 powers and duties of the account are performed,  
17 including, but not limited to, defining the date  
18 and conditions pursuant to which the account will  
19 commence coverage for claims by participating  
20 group self-insurer members and establishing  
21 provisions for determining limits of exposure for  
22 the account;

23 (c) Establish procedures for handling assets of a  
24 fund created pursuant to paragraph C;

25 (d) Establish underwriting rules and criteria by  
26 which rates are to be established;

27 (e) Establish procedures by which claims may be  
28 filed with the account;

29 (f) Establish an investment policy for a fund  
30 created pursuant to paragraph C;

31 (g) Establish procedures for records to be kept  
32 of all financial transactions of the account, its  
33 agents and the board of directors;

34 (h) Establish procedures for withdrawal from the  
35 account by a group self-insurer member, which  
36 must, at a minimum, require 90 days' notice from  
37 the withdrawing group self-insurer member to the  
38 board of directors and the Superintendent of  
39 Insurance;

40 (i) Establish, subject to approval by the  
41 Superintendent of Insurance, a minimum level of  
42 funding to be achieved by the account; and

2           (j) Contain additional provisions necessary or  
4           proper for the execution of the powers and duties  
              of the board of directors and the ability of the  
              account to meet its obligations.

6           C. The bylaws of an account established pursuant to this  
8           subsection must establish the powers and duties of the board  
              of directors of an account and must include the authority:

10           (1) To administer a group self-insurance specific  
12           reinsurance account fund, to be known in this  
14           subsection as "a fund," which must receive payments  
16           from participating group self-insurer members of the  
              account as required by paragraph A. The costs of  
              administration by the board of directors and expenses  
              of the account must be borne by the fund;

18           (2) In its discretion, to secure reinsurance for the  
20           fund's exposure and to otherwise invest the assets of  
22           the fund to effectuate the purpose of the account,  
              subject to the approval of the Superintendent of  
              Insurance;

24           (3) To accept or reject applications of group  
26           self-insurers to be underwritten by the account,  
28           subject to the approval of the Superintendent of  
              Insurance;

30           (4) To accept or reject applications of a group  
32           self-insurer member to self-insure any exposure for one  
              occurrence at a level other than \$500,000, subject to:

34           (a) Compliance with applicable provisions of the  
36           plan of operation established pursuant to  
              paragraph B;

38           (b) Notice to and approval by the Superintendent  
              of Insurance; and

40           (c) For higher retention levels, a statement from  
42           that member's actuary that the member has  
              adequately funded its additional exposure;

44           (5) To create a mechanism for assessing participating  
46           group self-insurer members if funds are insufficient to  
              pay the claims of the account;

48           (6) To retain actuarial assistance to be used in the  
              establishment of loss reserves, reinsurance and risk

2 management for the account, and in the development of  
3 underwriting criteria and premium rates for group  
4 self-insurer members. Rates are subject to approval by  
5 the Superintendent of Insurance;

6 (7) To associate with a participating group  
7 self-insurer member in the defense, investigation or  
8 settlement of any claim, suit or proceeding that  
9 appears to involve indemnity by the account. This  
10 authority does not create a duty to investigate,  
11 handle, settle or defend any claims, suits or  
12 proceedings against a group self-insurer member;

13 (8) To borrow funds;

14 (9) To amend the bylaws and plan of operation  
15 established pursuant to paragraph B, subject to the  
16 approval of the Superintendent of Insurance; and

17 (10) To exercise such other powers as are established  
18 in the plan of operation established pursuant to  
19 paragraph B.

20 D. An account is subject to examination and regulation by  
21 the Superintendent of Insurance. The board of directors of  
22 an account shall submit, within 120 days after the close of  
23 each fiscal year, an audited financial report and an  
24 actuarial report for the preceding fiscal year in a form  
25 approved by the superintendent. When the superintendent  
26 considers it necessary, the superintendent may require an  
27 account to maintain specific or aggregate reinsurance at  
28 such retention levels as the superintendent determines to be  
29 appropriate.

30 E. The Superintendent of Insurance may address any  
31 deficiency in reserves, assets or reinsurance of an account  
32 in accordance with this paragraph.

33 (1) The superintendent may conduct, upon reasonable  
34 notice, an examination to determine the financial  
35 condition of an account. An examiner duly qualified by  
36 the superintendent may examine the loss reserves,  
37 assets, liabilities, excess insurance and working  
38 capital of an account. If the superintendent finds  
39 that the reserves, excess insurance or assets may be  
40 inadequate, or that an account does not have working  
41 capital in an amount establishing the financial  
42 strength and liquidity of an account to pay claims  
43 promptly and showing evidence of the financial ability  
44 of an account to meet its obligations to group  
45 members.

2 self-insurer members, the superintendent shall notify  
3 an account of the inadequacy. Upon notification, the  
4 account within 30 days, or such other time as the  
5 superintendent approves, shall file with the  
6 superintendent its written plan specifying remedial  
7 action to be taken and the time frame for  
8 implementation of that plan.

10 (2) If the superintendent determines, after reviewing  
11 the information filed pursuant to paragraph D, that a  
12 hazardous financial condition exists, the  
13 superintendent shall notify an account of the  
14 condition. Upon notification, an account shall  
15 implement within 30 days, or such other time as the  
16 superintendent approves, its plan to correct any  
17 deficiencies and within 90 days shall file with the  
18 superintendent proof of remedial action taken. If the  
19 superintendent is satisfied that the plan submitted to  
20 improve the inadequate condition of an account is  
21 sufficient, the superintendent shall notify the  
22 account. The account shall report quarterly to the  
23 superintendent until any deficiencies and their causes  
24 have been corrected.

26 (3) The Superior Court may appoint the superintendent  
27 to act as receiver, in the same manner as for a  
28 delinquent insurer pursuant to Title 24-A, section  
29 4360, if the superintendent proves by clear and  
30 convincing evidence that a hazardous financial  
31 condition exists and that an account is unable or  
32 unwilling to take meaningful corrective action.

34 F. A group self-insurer's liability for participating in an  
35 account is governed by this paragraph.

36 (1) Each participating group self-insurer in an  
37 account has a contingent assessment liability in  
38 accordance with the plan of operation established  
39 pursuant to paragraph B for payment of claims and  
40 expenses incurred while a member of the account.

42 (2) Each contract or other document certifying  
43 participation in the account, issued by the account,  
44 must contain a statement of the contingent liability of  
45 participating group self-insurers.

46 G. An account is exempt from payment of all fees and all  
47 taxes levied by this State or any of its subdivisions,  
48 except taxes levied on real or personal property.  
49

2        H. This subsection does not create any liability on the  
4        part of, and a cause of action of any nature does not arise  
6        against, any group self-insurer member, an account or its  
8        agents or employees, the board of directors of an account or  
10       its individual members or the Superintendent of Insurance or  
12       the superintendent's representatives for any acts or  
14       omissions taken by them in the performance of their powers  
16       and duties under this subsection. The immunity established  
18       by this subsection does not extend to willful neglect or  
20       malfeasance that would otherwise be actionable.

22       I. Assets of an account's fund may be used exclusively for  
24       payment of expenses of the account and payment of claims  
26       against the account and for no other purpose.

28       J. The Superintendent of Insurance shall adopt rules to  
30       administer and effectuate the intent of this subsection.  
32       Rules adopted pursuant to this subsection are routine  
34       technical rules as defined in Title 5, chapter 375,  
36       subchapter 2-A.

38       K. In the event of dissolution of an account, all assets  
40       remaining after the satisfaction of all outstanding claims  
      must be distributed to the Treasurer of State to be included  
      in the Maine Self-Insurance Guarantee Association.'

## SUMMARY

      This amendment establishes an alternative method for a  
workers' compensation group self-insurer to secure payment of  
catastrophic losses arising out of a single occurrence. The  
amendment allows 4 or more group self-insurers to seek approval  
from the Superintendent of Insurance of an account to hold  
contributions from participating members and make claims payments  
on specific claims that are in excess of \$500,000.

**FISCAL NOTE REQUIRED**  
(See attached)





**121st Maine Legislature**  
**Office of Fiscal and Program Review**

**LD 852**

**An Act to Promote Alternatives in Group Self-insurance**

**LR 1734(02)**

**Fiscal Note for Bill as Amended by Committee Amendment " "**

**Committee: Insurance and Financial Services**

**Fiscal Note Required: Yes**

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**Fiscal Note**

Minor cost increase - Other Special Revenue Funds

**Fiscal Detail and Notes**

Any additional costs to the Department of Professional and Financial Regulation resulting from this bill can be absorbed by the Department utilizing existing resources.