

# MAINE STATE LEGISLATURE

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Date: 5/13/19

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INSURANCE AND FINANCIAL SERVICES

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
124TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 692, L.D. 1004, Bill, "An Act Relating to Self-insurance"

Amend the bill by inserting after the enacting clause and before section 1 the following:

Sec. 1. 24-A MRSA §601, sub-§16, as amended by PL 2003, c. 203, §1, is further amended to read:

16. Self-insurance authorization. Fees applicable to each self-insurer, individual or group, seeking authorization or authorized to operate a workers' compensation self-insurance plan, and each self-insurance reinsurance account and each protected cell of a self-insurance reinsurance account, may not exceed:

A. For filing application for initial authorization, including all documents submitted as part of the application, \$1,000;

A-1. For filing application for authority to self-insure under Title 39-A, section 403, subsection 16, including all documents submitted as part of the application, \$500;

B. Authorization For authorization and each annual continuation, \$300; and

C. Filing For filing a yearly report of a self-insurer, \$100.

If a self-insurer terminates the plan or otherwise does not continue to self-insure, the fee applicable to filing of yearly reports must apply to that period in which the making of these reports is mandated.'

Amend the bill in section 1 in subsection 4-A by striking out all of the first sentence (page 1, lines 4 to 9 in L.D.) and inserting the following: 'As an alternative to obtaining a reinsurance contract providing coverage against losses arising out of one occurrence, a an individual or group self-insurer authorized under this section may, with the approval of the Superintendent of Insurance, participate in a group self-insurance reinsurance account, referred to in this subsection as "an account," as provided in this subsection. A group self-insurer authorized under the laws of another state may participate in an account through a protected cell arrangement as provided in paragraph L.'

COMMITTEE AMENDMENT

2019

1 Amend the bill in section 1 in subsection 4-A by striking out all of paragraph A (page  
2 1, lines 17 to 42 and page 2, lines 1 to 4 in L.D.) and inserting the following:

3 'A. ~~Any~~ A group self-insurer that is subject to joint and several liability pursuant to  
4 subsection 4, paragraph F, a group self-insurer authorized under the laws of another  
5 state and that executes an agreement that its members will be jointly and severally  
6 liable in accordance with the provisions of paragraph L or an individual self-insurer  
7 authorized under this section that executes an agreement to be responsible for  
8 contingent assessment liability in accordance with the provisions of paragraph F may  
9 apply to reinsure through an account.

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

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

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

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

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

34 Amend the bill in section 1 in subsection 4-A by striking out all of paragraph F (page  
35 4, lines 33 to 41 in L.D.) and inserting the following:

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

38 (1) Each participating ~~group~~ self-insurer in an account has a contingent  
39 assessment liability in accordance with the plan of operation established pursuant  
40 to paragraph B for payment of claims and expenses incurred while a member of  
41 the account and must execute an agreement acknowledging that it is responsible  
42 for the prompt payment of all assessments necessary to ensure that the account is

1 fully funded and that, if any participant in the account fails to pay an assessment  
2 when due for any reason, the remaining participants are liable for the shortfall.

3 (2) Each contract or other document certifying participation in the account,  
4 issued by the account, must contain a statement of the contingent liability of  
5 participating group self-insurers.'

6 Amend the bill in section 1 in subsection 4-A by inserting after paragraph K the  
7 following:

8 'L. With the approval of the Superintendent of Insurance, a self-insurance  
9 reinsurance account may create one or more protected cells under its plan of  
10 operation for the purpose of reinsuring obligations of group self-insurers that are  
11 organized under the laws of another state. Any protected cell and all participating  
12 group self-insurers and their member employers are subject to the jurisdiction and  
13 oversight of the Superintendent of Insurance with respect to all matters relating to  
14 their participation on the account.

15 (1) Any out-of-state self-insurer that participates in the account may do so only  
16 through participation in a protected cell. An employer or group authorized by the  
17 Superintendent of Insurance to self-insure its Maine liabilities pursuant to this  
18 section is considered an out-of-state insurer to the extent that it is reinsuring out-  
19 of-state liabilities beyond the scope of its Maine self-insurance plan.

20 (2) The establishment of protected cells under this paragraph is a pilot project,  
21 limited to at most 2 protected cells, and approval of a protected cell or of a group  
22 self-insurer to participate in a protected cell is at the discretion of the  
23 Superintendent of Insurance. The Superintendent of Insurance may adopt rules  
24 pursuant to paragraph J to establish the terms and conditions of the pilot project,  
25 including criteria for the minimum and maximum size of a protected cell.

26 (3) A separate account must be established for each protected cell. All  
27 contributions from participants in a protected cell must be deposited into the  
28 protected cell account. Funds in a protected cell account may be used only for  
29 the payment of claims and expenses associated with that protected cell, which  
30 may include a reasonable administrative fee paid periodically into the general  
31 account. Notwithstanding any other provision of this subsection, participants in a  
32 protected cell are not liable for claims or expenses of any other protected cell or  
33 of the general account, and the general account is not liable for the claims of any  
34 protected cell or any expenses associated with such claims or otherwise  
35 specifically attributable to the protected cell.

36 (4) The minimum funding level for any protected cell may not be lower than the  
37 minimum funding level, calculated in accordance with the plan of operation and  
38 subject to paragraph E, that would apply to the general account with the same  
39 loss exposure and duration of operation. If the protected cell account falls short  
40 of the minimum funding level at any time, the reinsurance account must assess all  
41 protected cell participants. If a participating group self-insurer fails to pay any  
42 assessment in full when due, the reinsurance account must assess the group's  
43 member employers. All assessments are enforceable by the Superintendent of

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Insurance through an adjudatory proceeding under the Maine Administrative Procedure Act or through an action in the Superior Court.

(5) Each protected cell must have its own board of directors, at least 2/3 of whom must be chosen by the protected cell's participants. The plan of operation shall provide for a reasonable allocation of authority between the reinsurance account's board of directors and the protected cell's board of directors.

(6) No later than April 1st of each year, each reinsurance account with one or more protected cells must pay a regulatory assessment to the Bureau of Insurance from each protected cell account in the amount of 11/100 of 1% of the total standard reinsurance premium for the preceding calendar year for all participants in the protected cell for the level of coverage provided by the reinsurance account.

(7) All groups participating in a protected cell must provide the reinsurance account and the Superintendent of Insurance with financial and actuarial information sufficient to evaluate loss exposure and financial condition. All information provided to the superintendent by protected cell participants and their member employers is confidential pursuant to subsection 15. All protected cell participants and their member employers must authorize their domiciliary regulator to provide any information requested by the superintendent, which is confidential to the extent provided in Title 24-A, section 216, subsection 5.

(8) In evaluating the risk exposure of an out-of-state group self-insurer and in determining whether groups from different states may participate in the same protected cell, the reinsurance account and the Superintendent of Insurance shall consider any relevant differences in the states' regulatory frameworks for group self-insurance and in their workers' compensation benefit laws.

(9) A group self-insurer may not become a participant in a protected cell unless the group and all of its member employers have provided written acknowledgments to the Superintendent of Insurance that they are jointly and severally liable for the obligations of the protected cell and are subject to the jurisdiction of the superintendent and courts of the State for the enforcement of those obligations.

(10) Any disputes between self-insured members, the self-insurance reinsurance account and any protected cell, including but not limited to any dispute arising out of or relating to any enforcement order or mechanism imposed by the Superintendent of Insurance, must be resolved in this State and pursuant to the laws of this State.'

Amend the bill by inserting at the end before the summary the following:

**'Sec. 2. Appropriations and allocations.** The following appropriations and allocations are made.

**PROFESSIONAL AND FINANCIAL REGULATION, DEPARTMENT OF  
Insurance - Bureau of 0092**

1 Initiative: Allocates funds for the costs of one new Senior Insurance Examiner position  
2 and other related costs to oversee workers' compensation self-insurance reinsurance  
3 accounts that include the participation of group self-insurers authorized under the laws of  
4 other states.

5	<b>OTHER SPECIAL REVENUE FUNDS</b>	<b>2009-10</b>	<b>2010-11</b>
6	POSITIONS - LEGISLATIVE COUNT	1.000	1.000
7	Personal Services	\$60,447	\$85,245
8	All Other	\$8,388	\$6,897
9			
10	OTHER SPECIAL REVENUE FUNDS TOTAL	<u>\$68,835</u>	<u>\$92,142</u>

12 Amend the bill by relettering or renumbering any nonconsecutive Part letter or  
13 section number to read consecutively.

14 **SUMMARY**

15 This amendment makes changes to the laws relating to group self-insurance  
16 reinsurance accounts to:

17 1. Authorize individual self-insurers authorized under Maine law to participate in an  
18 account; and

19 2. Authorize the formation of a protected cell mechanism under which group self-  
20 insurers authorized under the laws of other states may participate in an account, similar to  
21 the structure currently provided for in the National Association of Insurance  
22 Commissioners Protected Cell Company Model Act and in the Maine Revised Statutes,  
23 Title 24-A, section 784-A.

24 The amendment also adds an appropriations and allocations section.

**FISCAL NOTE REQUIRED**

**(See attached)**



# 124th MAINE LEGISLATURE

LD 1004

LR 1192(02)

An Act Relating to Self-insurance

Fiscal Note for Bill as Amended by Committee Amendment "A"  
Committee: Insurance and Financial Services  
Fiscal Note Required: Yes

## Fiscal Note

	2009-10	2010-11	Projections 2011-12	Projections 2012-13
<b>Appropriations/Allocations</b>				
Other Special Revenue Funds	\$68,835	\$92,142	\$97,256	\$102,678

### Fiscal Detail and Notes

Provides an Other Special Revenue Funds allocation of \$68,835 in 2009-10 and \$92,142 in 2010-11 to the Bureau of Insurance in the Department of Professional and Financial Services for the costs of one new Senior Insurance Examiner position and other related costs for the bureau to oversee workers' compensation self-insurance reinsurance accounts that include the participation of group self-insurers authorized under the laws of other states.