

MAINE STATE LEGISLATURE

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124th MAINE LEGISLATURE

FIRST REGULAR SESSION-2009

Legislative Document

No. 1004

H.P. 692

House of Representatives, March 12, 2009

An Act Relating to Self-insurance

Reference to the Committee on Insurance and Financial Services suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative RICHARDSON of Warren.
Cosponsored by Senator BOWMAN of York and
Representatives: BECK of Waterville, FOSSEL of Alna, GOODE of Bangor, Senator:
McCORMICK of Kennebec.

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

2 **Sec. 1. 39-A MRSA §403, sub-§4-A**, as amended by PL 2003, c. 671, Pt. A,
3 §§11 and 12, is further amended to read:

4 **4-A. Group self-insurance reinsurance account.** As an alternative to obtaining a
5 reinsurance contract providing coverage against losses arising out of one occurrence, a
6 group self-insurer authorized under the laws of this State or any other state, or an
7 individual self-insurer authorized under this section may participate in a group self-
8 insurance reinsurance account, referred to in this subsection as "an account," as provided
9 in this subsection. More than one account may be established pursuant to this
10 subsection. An account established pursuant to this subsection may be established as
11 either an independent private entity or an instrumentality of the State, but the debts and
12 liabilities of an account established as an instrumentality of the State are not debts and
13 liabilities of the State. An account established as an instrumentality of the State within 24
14 months of its formation, with the approval of the ~~superintendent~~ Superintendent of
15 Insurance, may transfer all of its assets and liabilities into an account established as an
16 independent private entity.

17 A. ~~Any~~ A group self-insurer that is subject to joint and several liability pursuant to
18 subsection 4, paragraph F or a group self-insurer authorized under the laws of another
19 state and that executes an agreement to be jointly and severally liable in accordance
20 with the provisions of paragraph F or an individual self-insurer authorized under this
21 section that executes an agreement to be jointly and severally liable in accordance
22 with the provisions of paragraph F may apply to reinsure through an account.

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

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

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

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

38 (5) A ~~group~~ self-insurer's participation in an account is considered as a
39 component of the ~~group~~ self-insurer's renewal application. A ~~group~~ self-insurer's
40 membership in an account is considered adequate protection against losses
41 arising out of a single occurrence unless the Superintendent of Insurance
42 determines, after considering the financial condition and catastrophic loss

- 1 exposure of both the group self-insurer and the account, that it is necessary to
2 maintain additional reinsurance protection, maintain a lower self-insured
3 retention level or provide some other form of additional security, singly or in
4 combination.
- 5 B. An account must operate in accordance with a plan of operation established by the
6 group self-insurer members and approved by the Superintendent of Insurance.
- 7 (1) Those group self-insurers creating an account shall submit to the
8 Superintendent of Insurance a plan of operation and any amendments to it that
9 are necessary to ensure the fair, reasonable and equitable administration of the
10 account. The plan of operation is effective upon approval by the superintendent.
11 Any amendments subsequent to the plan's initial approval must be submitted to
12 the superintendent by the plan's board of directors and are effective upon
13 approval by the superintendent.
- 14 (2) The plan of operation must:
- 15 (a) Create a board of directors and initial bylaws, including the terms and
16 conditions of board membership and the manner by which board members
17 are initially appointed and are replaced when vacancies occur;
- 18 (b) Establish the procedures by which all the powers and duties of the
19 account are performed, including, but not limited to, defining the date and
20 conditions pursuant to which the account will commence coverage for claims
21 by participating group self-insurer members and establishing provisions for
22 determining limits of exposure for the account;
- 23 (c) Establish procedures for handling assets of a fund created pursuant to
24 paragraph C;
- 25 (d) Establish underwriting rules and criteria by which rates are to be
26 established;
- 27 (e) Establish procedures by which claims may be filed with the account;
- 28 (f) Establish an investment policy for a fund created pursuant to paragraph
29 C;
- 30 (g) Establish procedures for records to be kept of all financial transactions of
31 the account, its agents and the board of directors;
- 32 (h) Establish procedures for withdrawal from the account by a group self-
33 insurer member, which must, at a minimum, require 90 days' notice from the
34 withdrawing group self-insurer member to the board of directors and the
35 Superintendent of Insurance;
- 36 (i) Establish, subject to approval by the Superintendent of Insurance, a
37 minimum level of funding to be achieved by the account; and
- 38 (j) Contain additional provisions necessary or proper for the execution of the
39 powers and duties of the board of directors and the ability of the account to
40 meet its obligations.

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

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

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

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

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

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

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

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

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

23 (6) To retain actuarial assistance to be used in the establishment of loss reserves,
24 reinsurance and risk management for the account, and in the development of
25 underwriting criteria and premium rates for ~~group~~ self-insurer members. Rates
26 are subject to approval by the Superintendent of Insurance;

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

32 (8) To borrow funds;

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

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

37 D. An account is subject to examination and regulation by the Superintendent of
38 Insurance. The board of directors of an account shall submit, within 120 days after
39 the close of each fiscal year, an audited financial report and an actuarial report for the
40 preceding fiscal year in a form approved by the superintendent. When the
41 superintendent considers it necessary, the superintendent may require an account to

1 maintain specific or aggregate reinsurance at such retention levels as the
2 superintendent determines to be appropriate.

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

5 (1) The ~~superintendent~~ Superintendent of Insurance may conduct, upon
6 reasonable notice, an examination to determine the financial condition of an
7 account. An examiner duly qualified by the superintendent may examine the loss
8 reserves, assets, liabilities, excess insurance and working capital of an account. If
9 the superintendent finds that the reserves, excess insurance or assets may be
10 inadequate, or that an account does not have working capital in an amount
11 establishing the financial strength and liquidity of an account to pay claims
12 promptly and showing evidence of the financial ability of an account to meet its
13 obligations to ~~group~~ self-insurer members, the superintendent shall notify an
14 account of the inadequacy. Upon notification, the account within 30 days, or
15 such other time as the superintendent approves, shall file with the superintendent
16 its written plan specifying remedial action to be taken and the time frame for
17 implementation of that plan.

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

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

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

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

39 (2) Each contract or other document certifying participation in the account,
40 issued by the account, must contain a statement of the contingent liability of
41 participating ~~group~~ self-insurers.

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

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

8 I. Assets of an account's fund may be used exclusively for payment of expenses of
9 the account and payment of claims against the account and for no other purpose,
10 except that an account established as an independent private entity pursuant to this
11 subsection may issue such dividends to its members as are approved by the
12 superintendent.

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

16 K. In the event of dissolution of an account established as an instrumentality of the
17 State pursuant to this subsection, all assets remaining after the satisfaction of all
18 outstanding claims must be distributed to the Treasurer of State to be included in the
19 Maine Self-Insurance Guarantee Association.

20 SUMMARY

21 This bill amends the laws relating to group self-insurance reinsurance accounts to
22 clarify that individual self-insurers authorized under Maine law and group self-insurers
23 authorized under the laws of other states may participate in the account.