

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND TWELFTH LEGISLATURE

SECOND REGULAR SESSION
January 8, 1986 to April 16, 1986

SECOND SPECIAL SESSION
May 28, 1986 to May 30, 1986

AND AT THE

THIRD SPECIAL SESSION
October 17, 1986

PUBLISHED BY THE DIRECTOR OF REVISOR OF STATUTES IN
ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Co., Inc.
Augusta, Maine

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
SECOND REGULAR SESSION
of the
ONE HUNDRED AND TWELFTH LEGISLATURE
1985

Sec. 2. 29 MRSA §2241, sub-§1-A, as enacted by PL 1983, c. 334, §2, is amended to read:

1-A. Suspension for failure to comply with tax law. The Secretary of State or any Deputy Secretary of State may suspend all the certificates of registration and all the fuel use identification decals issued by the State to any motor carrier without preliminary hearing upon showing by records or other sufficient evidence that the person responsible for complying with the payment of reporting provisions of Title 36, chapter 453, 457 ~~or~~, 459 or 463-A has failed to comply with the provisions in these chapters. The Secretary of State shall notify the motor carrier that all certificates of registration and all fuel use identification decals issued to that motor carrier are in suspension and that the motor carrier may request a hearing in writing within 10 days. Any suspension shall remain in effect pending the outcome of the hearing.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

Effective February 7, 1986.

CHAPTER 524

S.P. 676 - L.D. 1749

AN ACT Pertaining to Product Liability Risk Retention Groups.

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

Sec. 1. 24-A MRSA §427, sub-§5, as amended by PL 1969, c. 177, §11, is further amended to read:

5. Bid bonds issued in connection with any public or private contract; ~~or~~

Sec. 2. 24-A MRSA §427, sub-§6, as enacted by PL 1969, c. 132, §1, is amended to read:

6. Group insurance of a type permitted by this Title issued to a nonresident policyholder, and any insurance certificate applicable to it;

Sec. 3. 24-A MRSA §427, sub-§7, as amended by PL 1979, c. 162, is further amended to read:

7. Automobile assigned risk policies which are required by section 2325 and any endorsements applicable to them; or

Sec. 4. 24-A MRSA §427, sub-§8 is enacted to read:

8. Product liability or completed operations liability coverage as defined in chapter 69 issued to a risk retention group or any member of that group.

Sec. 5. 24-A MRSA c. 69 is enacted to read:

CHAPTER 69

MAINE PRODUCT LIABILITY RISK RETENTION ACT

§6001. Short title

This chapter shall be known as the "Maine Product Liability Risk Retention Act."

§6002. Definitions

As used in this Act, unless the context indicates otherwise, the following terms have the following meanings.

1. "Commissioner" means the commissioner, director or superintendent of insurance in any state other than Maine.

2. "Completed operations liability" means liability arising out of the installation, maintenance or repair of any product at a site which is not owned or controlled by:

A. Any person who performs that work; or

B. Any person who hires an independent contractor to perform that work.

"Completed operations liability" does not include liability for activities which are completed or abandoned before the date of the occurrence giving rise to the liability.

3. "Insurance" means primary insurance, excess insurance, reinsurance, surplus lines insurance and

any other arrangement for shifting and distributing risk which is determined to be insurance under the laws of this State.

4. "Product liability" means liability for damages because of any personal injury, death, emotional harm, consequential economics damage or property damage, including damages resulting from the loss of use of property, arising out of the manufacture, design importation, distribution, packaging, labeling, lease or sale of a product, but does not include the liability of any person for those damages if the product involved was in the possession of such a person when the incident giving rise to the claim occurred.

5. "Risk retention group" means any corporation or other limited liability association taxable as a corporation or as an insurance company formed pursuant to this Act:

A. Which is organized for the primary purpose of assuming and spreading the product liability or completed operations liability risk exposure of its members;

B. Whose primary activity consists of assuming and spreading all, or any portion, of the product liability or completed operations liability risk exposure of its group's members; and

C. Which is composed of members each of whose principal activity consists of the manufacture, design, importation, distribution, packaging, labeling, lease or sale of a product or products.

6. "Service providers" means any person providing insurance related services or management services to, or for, a risk retention group, including, but not limited to, agents, brokers, claims appraisers and adjusters, insurers, actuaries and financial management consultants.

7. "State" means the State of Maine and "state" means any state of the United States and the District of Columbia.

8. "Superintendent" means the Superintendent of Insurance of this State.

§6003. Risk retention groups organized in this State

A risk retention group seeking to be organized in this State must be domiciled and licensed as an in-

insurance company authorized by the insurance laws of this State and, except as provided elsewhere in this Act, must comply with all of the laws, rules and requirements applicable to those insurers, domiciled and licensed in this State.

§6004. Risk retention groups not chartered in this State

1. Any risk retention group organized in Bermuda or the Cayman Islands or states other than this State and seeking to do business as a risk retention group in this State must:

A. Register with the Superintendent of Insurance of this State;

B. Designate the superintendent as its agent for service of process and receipt of legal documents in accordance with sections 421 and 422;

C. File with the superintendent its annual statement as filed with the commissioner in the domiciliary state or the public official having supervision of insurance in that jurisdiction where the group has been formed, and is required to submit an annual statement in substantially that form and content as required of insurer licensed in this State pursuant to section 423;

D. File a copy of the last examination, if any, made of the risk retention group, certified by the commissioner of the domiciliary state or the public official having supervision of insurance in the domiciliary jurisdiction; and

E. File with the superintendent no later than May 1st the product liability loss experience data report required as an addendum to the annual statement.

2. Risk retention groups chartered in Bermuda or the Cayman Islands, in addition to the requirements of subsection 1, must:

A. Be chartered or licensed and authorized to do business under the laws of Bermuda or the Cayman Islands before January 1, 1985;

B. File with the Superintendent of Insurance of this State a copy of the certification filed with the commissioner of at least one state that satisfied the capitalization requirements of that

state, together with evidence that such certification has been accepted by the commissioner of that state as meeting the requirements of that state; and

C. File with the superintendent of the state in which it certifies its capitalization a waiver of any secrecy laws of the jurisdiction in which it is chartered.

§6005. Agents and brokers

1. The following provisions apply to agents and brokers.

A. Any person who is a resident of this State, acting or offering to act as an agent or broker for a risk retention group, whose activities include, but are not limited to, the solicitation, negotiation and placement of insurance on behalf of a risk retention group operating in this State, or any of its members in this State, must obtain a license as an agent or broker in accordance with chapter 17.

B. An agent or broker duly licensed by another state and residing outside of this State may act as an agent or broker for a risk retention group operating in this State or any of its members in this State in the same manner as a resident agent or broker, upon obtaining a license in accordance with chapter 17.

C. Any agent or broker licensed in accordance with paragraph A or B, in addition must report to the superintendent the activities and scope of services the agent or broker is providing to the risk retention group.

2. Before placing business with a risk retention group, each agent or broker shall secure from the appropriate insurance regulatory authority a certified copy of the certificate of authority verifying that the insurer is authorized in its domiciliary jurisdiction to write the product liability or completed operations insurance policy proposed to be procured from it by the agent or broker.

3. Each agent or broker shall assure that every policy or contract of insurance placed by an agent or broker with a risk retention group chartered or licensed in this State shall bear across its face in

not less than 10 point bold red type the following legend:

"THE INSURANCE HEREBY EVIDENCED IS WRITTEN BY A RISK RETENTION GROUP LICENSED BY THE STATE OF MAINE, BUT, IN THE EVENT OF INSOLVENCY OF THIS RISK RETENTION GROUP, IS NOT PROTECTED BY THE MAINE INSURANCE GUARANTY ASSOCIATION."

4. Each agent or broker shall assure that every policy or contract of insurance placed by an agent or broker with a risk retention group not chartered or licensed in this State shall bear across its face in not less than 10 point bold red type the following legend:

"THE INSURANCE HEREBY EVIDENCED IS WRITTEN BY A RISK RETENTION GROUP NOT LICENSED BY THE STATE OF MAINE, NOT SUBJECT TO ITS SUPERVISION AND NOT PROTECTED, IN THE EVENT OF THE INSOLVENCY OF THIS RISK RETENTION GROUP, BY THE MAINE INSURANCE GUARANTY ASSOCIATION."

§6006. Taxes

1. All risk retention groups shall be subject to taxation and shall be deemed to be insurers for the purpose of assessing and collecting taxes in accordance with chapter 7 and subject to the same interest, fines and penalties for nonpayment.

2. Agents and brokers shall report and pay the taxes upon the premiums for risks which they have placed with or on behalf of a risk retention group not chartered in this State.

§6007. Restrictions

A risk retention group may not:

1. Insure any risks other than those of its member companies;

2. Provide any insurance or insurance related services other than for product liability or completed operations unless it obtains a license in this State and becomes subject to all laws and regulations of this State with respect to those additional lines of insurance and related services; or

3. Exclude any person from membership in the group solely to provide for members of such a group a competitive advantage over such a person.

§6008. Exemption from compulsory associations

No risk retention group, with respect to its product liability or completed operations insurance, may join or contribute financially to any insurance insolvency guaranty fund, or similar mechanism, in this State, nor may any risk retention group, or its insureds, receive any benefit from any such fund for claims arising out of the operations of that risk retention group for product liability or completed operations insurance.

§6009. Examination for financial impairment

1. A risk retention group domiciled in this State must submit to examinations to determine its financial condition as deemed necessary by the superintendent.

2. A risk retention group not domiciled in this State and doing business in this State must submit to an examination if:

A. The superintendent has reason to believe the risk retention group is in financially impaired condition; and

B. The commissioner of the state or the public official having supervision over insurance in the jurisdiction in which the group is domiciled has not begun or has refused to initiate an examination of the group.

For purposes of paragraph A, financial statements relating to a risk retention group prepared by qualified independent public accountants wherein an opinion is expressed by those accountants that the equity funds of the group are not at least equal to the paid-up capital or basic surplus funds of the group shall constitute prima facie evidence of financial impairment.

3. The examination shall be conducted in accordance with laws, rules and procedures applicable to insurers licensed in this State.

4. To the extent that the results of findings obtained from any examination conducted pursuant to this section disclose the risk retention group is possessed of capital funds in an amount less than those which would be required by the state of domicile or, in the case of risk retention groups chartered in Bermuda or the Cayman Islands, by the

state where the certification required by section 6002, subsection 2, paragraph B, has been filed, of a domestic casualty insurer writing such lines of business, that group shall be deemed an impaired insurer.

§6010. Delinquency proceedings

1. A risk retention group domiciled and licensed in this State must comply with all lawful orders issued in a delinquency proceeding commenced by the superintendent.

2. A risk retention group not domiciled in this State and doing business in this State must comply with a lawful order issued in a delinquency proceeding commenced by the superintendent if the commissioner of the state or the public official having supervision over insurance in the jurisdiction in which the group is domiciled has failed to initiate such a proceeding after notice of a finding of financial impairment under section 6009.

§6011. Penalties

1. A risk retention group which is domiciled and licensed under sections 6003 and 6004 and which violates any provision of this chapter shall be subject to fines and penalties applicable to licensed insurers generally, including revocation of its license and the right to do business in this State.

2. A risk retention group doing business in this State and which is not domiciled or licensed in accordance with either section 6003 or 6004 is an unauthorized insurer and subject to the fines and penalties of the Maine Insurance Code relating to unauthorized insurers.

§6012. Rules

The superintendent may establish, and from time to time amend, such rules relating to risk retention groups as are necessary to carry out the provisions of this chapter.

Effective July 16, 1986.

CHAPTER 525

H.P. 1412 - L.D. 1996

AN ACT Concerning the Membership of the
Advisory Commission on Radioactive
Waste.