LAWS

OF THE

STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND FIFTEENTH LEGISLATURE

THIRD SPECIAL SESSION
October 1, 1992 to October 6, 1992

FOURTH SPECIAL SESSION
October 16, 1992

ONE HUNDRED AND SIXTEENTH LEGISLATURE

FIRST REGULAR SESSION
December 2, 1992 to July 14, 1993

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
OCTOBER 13, 1993

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

J.S. McCarthy Company
Augusta, Maine
1993

PUBLIC LAWS

OF THE

STATE OF MAINE

AS PASSED AT THE

FIRST REGULAR SESSION

of the

ONE HUNDRED AND SIXTEENTH LEGISLATURE

1993

tion 208~~;~~ has occurred between members of the same family or household, that enforcement officer shall arrest and take into custody the alleged offender.

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

Effective July 13, 1993.

CHAPTER 470

H.P. 1086 - L.D. 1465

An Act to Amend Statutory Provisions Regarding Risk Management Funds

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

Sec. 1. 5 MRSA §1728-A, as amended by PL 1991, c. 376, §21, is further amended to read:

§1728-A. Powers and duties of the director

1. Duties. The director shall provide insurance advice and services for all forms of insurance for ~~the~~ State Government and any department or agency ~~thereof~~ of State Government except for those departments or agencies and those types of insurance otherwise provided for by law through the self-insurance fund and to other entities designated as entitled to advice and services through the state-administered fund pursuant to section 1737 ~~for all forms of insurance, except for those departments or agencies and those types of insurance otherwise provided for by law. The director shall provide insurance advice and services for family foster homes, as defined in Title 22, section 8101, subsection 3; respite care providers, as defined in Title 34-B, section 6201, subsection 2-A; the Casco Bay Island Transit District created by Private and Special Law 1981, chapter 22; and commercial applicators and spray contracting firms that are required to provide proof of financial responsibility in custom application pursuant to Title 22, section 1471-D, subsection 4, and private applicators as defined in Title 22, section 1471-C, subsection 22, who may be required to provide proof of insurance.~~ The director is responsible for the acquisition and administration of all insurance purchased by the State, including the authority to purchase~~, on a competitive bid basis,~~ insurance for the State for automobile, fire, liability and any other type of coverage necessary to protect the State from financial loss. The director may enter into contracts for various types of claims management services in order to ensure the most economically advantageous insurance protection in the operation of the State's insurance coverage program. In these regards, the director has the following duties:

A. To review annually the entire subject of insurance as it applies to all state property and activities and other persons pursuant to this section, and to provide to the ~~commissioner~~ Commissioner of Administrative and Financial Services a statement of its activities during the year ending the preceding June 30th. This report ~~shall~~ must include:

(1) An evaluation of the state insurance program;

(2) A complete statement of all types and costs of insurance in effect;

(3) Names of agents and companies of record; and

(4) Such other matters as the director determines ~~to be~~ appropriate and necessary or as the commissioner may request;

B. To recommend to the ~~commissioner~~ Commissioner of Administrative and Financial Services such insurance protection as the director ~~may deem~~ considers necessary or desirable for the protection of all state property or activities or other insureds under this section;

C. Pursuant to programs approved by the ~~commissioner~~ Commissioner of Administrative and Financial Services, to provide insurance protection for ~~state~~ property and liability ~~insurance~~ in accordance with the Maine Tort Claims Act, Title 14, section 8116, and premises liability, when required by a state lease or private property approved by the Attorney General, by self-insured retention~~, as provided,~~ or purchase of insurance from companies or agents licensed to do business in this State, or by both, to effect the best possible contracts as to services, coverages and costs. The purchase of insurance under this section normally ~~shall~~ must be made upon competitive bidding, except that the director may, in appropriate circumstances, purchase insurance by negotiation~~.~~;

~~In the event of the purchase of insurance upon competitive bidding by qualified insurers, the director shall announce the low bid at a meeting advertised for the opening of bids, which, when approved by the commissioner, shall constitute an award of a contract of insurance;~~

D. To determine and review the values of property in which the State has an insurable or legal interest and recommend limits and types of insurance protection for that property;

E. To establish and promote safety and other loss prevention programs;

F. To receive and, with the assistance of the Attorney General, administer all claims for personal injury and property damage against the State; ~~and~~

G. With the assistance of the Attorney General, to pursue all claims against 3rd parties in all cases in which the State may be subrogated to the rights of injured employees or where damage to state property may have resulted from the negligence of a 3rd party~~.~~;

H. To administer the funds established by sections 1731 and 1737. In performing the functions authorized by this chapter, the funds, the Commissioner of Administrative and Financial Services and the director are not subject to the provisions of Title 24-A; and

I. On or before December 31, 1996 and every 3 years thereafter, to submit to the Commissioner of Administrative and Financial Services a report on the availability and affordability of insurance advice and services to those entities participating in the state-administered fund pursuant to section 1737 and to make specific recommendations for the removal from the state-administered fund of those entities that do not qualify.

2. Appraisal. In case an agreement as to the amount of loss sustained to any building or property insured under this chapter ~~cannot~~ can not be arrived at between the ~~state agency claimant~~ insured entity and the director, the loss ~~shall~~ must be referred to appraisal as provided ~~for in~~ by Title 24-A, section 3002.

3. Rejection of risk. In the event that the director determines that a risk may be prejudicial to the ~~state's~~ State's insurance program or to the state-administered fund established by section 1737 because of an actual or expected adverse loss ratio, ~~he~~ the director may refuse to include that risk in the program until ~~such~~ the time ~~as~~ that the hazards of the risk have been removed or ameliorated to a satisfactory degree.

When coverage is declined by the director, the department ~~or~~, agency or entity in charge of the risk may request that the director procure separate insurance ~~thereon~~ from any authorized insurance company, and the premium ~~therefor shall be~~ for that separate insurance is a proper charge against the department ~~or~~, agency or entity responsible for the property.

4. Forms and rules. The director may prescribe forms of policies, proofs of ~~losses~~ loss and other forms and ~~make such~~ may adopt rules as ~~may be~~ are necessary or expedient for the proper administration of this chapter.

5. Actuarial review. Once every 3 years, and more frequently if determined prudent by the Commissioner of Administrative and Financial Services, the director shall arrange for a review of the reserves of the state-administered fund by a qualified actuary who is a member in good standing of the Casualty Actuarial Society. The actuary shall issue an opinion on the adequacy of reserves of the state-administered fund to cover the estimated ultimate liability of the state-administered fund. Costs for this service must be paid from the Risk Management Fund.

Sec. 2. 5 MRSA §1731, as amended by PL 1991, c. 591, Pt. III, §11, is further amended to read:

§1731. Reserve fund for self-insured retention losses

A reserve fund, referred to in this chapter ~~called~~ as the ~~"fund,"~~ "self-insurance fund," is created to indemnify the State or the State's designated payee for self-insured retention losses and related loss adjustment expenses from those perils insured against under a deductible or self-insured retention program, as recommended by the director and approved by the ~~commissioner~~ Commissioner of Administrative and Financial Services. With the approval of the commissioner, the self-insurance fund may be used for loss prevention programs administered by either the ~~Risk Management Division~~ risk management division within the Bureau of General Services or the Bureau of Human Resources. The total amount of the self-insurance fund provided for loss prevention programs in any given year may not exceed 5% of the self-insurance fund as of July 1st of that fiscal year. The self-insurance fund is a continuing fund and ~~may~~ does 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.

As approved by the ~~commissioner~~ Commissioner of Administrative and Financial Services, up to ~~15%~~ 10% of the amount of the self-insurance fund as of July 1st of each fiscal year may be used to ensure the prompt payment of workers' compensation claims 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.

~~With the approval of the commissioner, up to 15% of the 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.~~

Sec. 3. 5 MRSA §1731-A, first ¶, as amended by PL 1989, c. 857, §21, is further amended to read:

Deductible or self-insured retention provisions hereunder 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.

Sec. 4. 5 MRSA §1732, as amended by PL 1991, c. 780, Pt. Y, §52, is further amended to read:

§1732. Administration

The self-insurance fund must be administered by the Commissioner of Administrative and Financial Services. The 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.

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

§1733. Capitalization of self-insurance fund

The self-insurance fund is capitalized by legislative appropriations, payments from state departments and agencies, investment income accruing to the self-insurance fund and by such other means as the Legislature ~~may approve~~ approves.

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

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

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

Sec. 6. 5 MRSA §1734, as amended by PL 1983, c. 349, §16, is further amended to read:

§1734. Self-insurance fund limitation

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

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

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

Sec. 7. 5 MRSA §1735, as amended by PL 1983, c. 349, §17, is further amended to read:

§1735. Depletion of self-insurance fund

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

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

§1736. Payment of losses

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

Sec. 9. 5 MRSA §1737 is enacted to read:

§1737. State-administered fund

1. Creation of state-administered fund. A reserve fund, referred to in this chapter as the "state-administered fund," is created to indemnify persons and entities eligible for participation pursuant to subsection 2 for losses and related loss adjustment expenses from those perils insured against under a deductible or self-insured retention program as recommended by the director and approved by the Commissioner of Administrative and Financial Services. With the approval of the commissioner, the state-administered fund may be used for loss prevention programs administered by the risk management division within the Bureau of General Services. The total amount of the state-administered fund provided for loss prevention programs in any given year may not exceed 5% of the state-administered fund as of July 1st of that fiscal year. The state-administered fund is a continuing fund and does not lapse.

2. Eligibility for participation in state-administered fund. The director may offer insurance advice and services to persons or entities other than state departments or agencies if:

A. The director has been authorized to do so by law;

B. The Governor has approved that person or entity for insurance advice and service;

C. Coverage is unavailable or is offered only at unreasonable cost to that person or entity; and

D. That person or entity has demonstrated a strong public need for the services provided by that person or entity.

3. Interim coverage. The director may offer insurance advice and services for no more than 6 months when the Governor, in the absence of the Legislature, determines that it is appropriate to do so based on consideration of the risks involved and the governmental objectives served by that coverage.

4. Directed services. Notwithstanding the provisions of subsection 2, the director may provide insurance advice or services for family foster homes as defined in Title 22, section 8101, subsection 3; respite care providers as defined in Title 34-B, section 6201, subsection 2-A; the Casco Bay Island Transit District created by Private and Special Law 1981, chapter 22; the University of Maine System; the Maine Technical College System; and the Maine Maritime Academy.

5. Capitalization of state-administered fund. The state-administered fund is capitalized by payments from persons or entities insured by the fund, by returned premiums or claims proceeds paid pursuant to terms of any insurance contract and by other means the Legislature approves. In establishing the initial capitalization of the state-administered fund, the Commissioner of Administrative and Financial Services may transfer from the self-insurance fund established by section 1731 to the state-administered fund an amount that the commissioner determines to be the existing balance attributable to any risks formerly covered by the self-insurance fund that must be covered in the future by the state-administered fund. The commissioner shall deposit the state-administered fund with the Treasurer of State for investment. All proceeds of that investment accrue to the state-administered fund. The commissioner shall comply with applicable federal circulars and has the discretion to include public instrumentalities in the state-administered fund if the commissioner determines that the inclusion of these instrumentalities is necessary to allow the state-administered fund as a whole to offer insurance at affordable rates.

6. Limitation on use of state-administered fund. The state-administered fund may be used only for insurance purposes in accordance with this chapter and the assets of the state-administered fund may not be transferred to meet a budgetary shortfall or pay uninsured expenses.

7. No expansion of liability under the Maine Tort Claims Act. The insurance advice and services provided by the state-administered fund do not expand the limits of liability or abrogate immunities contained in the Maine Tort Claims Act or any other state or federal law.

8. Payments from state-administered fund. Pursuant to the recommendation of the director, the Commissioner of Administrative and Financial Services may cause payments from the state-administered fund or proceeds of insurance purchased in accordance with this section, or both, to be made available for repair or replacement of insured property and payment of losses and loss adjustment expenses. The rights of a person or entity insured under this section are limited to the extent specified in the contractual agreements or policies of insurance entered into between those persons or entities and the director and any involved insurance companies. Notwithstanding any contractual agreements or policies of insurance, persons or entities participating in the state-administered fund do not have a right of recovery except against the assets of the state-administered fund and do not have recourse against the General Fund, the assets of the State or the commissioner, the director or any other state employee. The commissioner shall establish procedures to ensure adequate disclosure of this limitation on rights of recovery to the entities insured under this section.

Sec. 10. Report. On or before January 1, 1994, the Bureau of General Services, the Bureau of Insurance, the Department of Human Services and the Department of Mental Health and Mental Retardation shall report to the Joint Standing Committee on Banking and Insurance on the availability and cost of insurance for residential child care facilities and specialized children's homes as defined in the Maine Revised Statutes, Title 22, section 8101.

See title page for effective date.

CHAPTER 471

S.P. 480 - L.D. 1478

An Act to Increase Tourism Visits and Tourism Revenues for the State

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the tourism industry, employing 78,000 people, is the largest employer by industry sector in the State; and

Whereas, the tourism industry contributes $100,000,000 in state tax revenues annually; and