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An Act To Create a State-sponsored Mutual Liability Company To Underwrite Risk for Snowmobile and ATV Clubs

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

Sec. 1. 24-A MRSA c. 52-A is enacted to read:

CHAPTER 52-A

MAINE SNOWMOBILE AND ATV CLUB MUTUAL LIABILITY COMPANY

§ 3751. Definitions

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

1. Board. "Board" means the Board of Directors of the Maine Snowmobile and ATV Club Mutual Liability Company.

2. Company. "Company" means the Maine Snowmobile and ATV Club Mutual Liability Company created in section 3752.

3. Snowmobile and ATV club. "Snowmobile and ATV club" means a volunteer nonprofit association formed for the purpose of promoting the use of snowmobiles or all-terrain vehicles for recreation that maintains and grooms trails for riding snowmobiles or all-terrain vehicles over public land and private land with permission of the landowner.

§ 3752. Establishment

1. Company established. The Maine Snowmobile and ATV Club Mutual Liability Company is established as an assessable domestic mutual insurance company subject to all the requirements and standards of this Title that are applicable to cash plan insurers unless specifically exempted from those requirements or standards or that are clearly inconsistent with the provisions contained in this chapter. Notwithstanding any other law to the contrary, the company's authority to operate is limited as provided in this chapter.

2. Liability insurance. The company shall provide liability insurance for the protection of snowmobile and ATV clubs and their members and to indemnify against liability landowners who permit snowmobile and ATV clubs to maintain recreational trails on private land. The company may not write other lines of insurance.

3. Exclusion from guaranty funds. The company and its policyholders are exempt from participation in and may not join or contribute financially to, nor be entitled to the protection of, any plan, pool, association or guaranty or insolvency fund authorized or required by this Title.

4. Incorporation. The company must be incorporated pursuant to the provisions of this Title and Title 13. Upon appointment, the incorporators shall execute a certificate of organization as required by this Title and immediately pursue a certificate of authority for an assessable domestic mutual insurance company. The incorporators shall appoint the initial 9 members of the board as required in subsection 5.

5. Composition of the board. The company is governed by a 9-member board as follows. Five members must be representatives of snowmobile and ATV clubs that purchase coverage from the company, except that the initial appointments may include representatives of snowmobile and ATV clubs without regard to whether or not the club has purchased liability coverage through another insurance company. Two members must be landowners who authorize snowmobile and ATV clubs to use their private land. One member must have experience and expertise relating to liability insurance. The remaining board member is the president and chief executive officer appointed pursuant to section 3755, subsection 4 who shall serve on the board while employed as president and chief executive officer. A member of the board may not be a lobbyist required to be registered with the Secretary of State.

6. Terms. A full term is 3 years. An individual may not serve more than 2 full terms as a board member. All members shall serve for the terms provided and until their successors are appointed or elected and qualified.

7. Corporate governance. The initial board shall, at the organizational meeting of the company to complete organization, adopt bylaws consistent with section 3359. The bylaws must provide a schedule of meetings and rules specifically relating to the conduct of meetings and voting procedures.

8. Annual report. In addition to any other reports required by this Title, the company shall submit an annual report to the Governor and to the joint standing committee of the Legislature having jurisdiction over insurance matters that discloses the business transacted by the company during the previous year and states the resources and liabilities of the company together with other pertinent information considered appropriate by the board. The report must contain, at a minimum, a summary of the latest annual statement filing required to be filed under this Title with the superintendent prepared on a basis of statutory accounting precepts. Any variations between the annual statement and the annual report must be reconciled to clearly show variances and the basis for any different values.

9. Nominating committee. The board shall create a nominating committee. The nominating committee shall present to the board nominees for board member positions.

§ 3753. Initial funding and operation

Upon appointment of the initial board, the board shall elect a chair and shall employ a president who shall serve as chief executive officer pursuant to section 3755, subsection 4. The company may borrow from the General Fund initial start-up funds of up to \$5,000,000. Any funds borrowed must be secured by future premiums collected, and half of the funds borrowed plus interest must be repaid not later than March 31, 2010, and the remaining funds plus interest must be repaid not later than March 31, 2012.

§ 3754. Nonstate agency

The company is not considered a state agency or instrumentality of the State for any purpose. Except as provided for initial start-up funds in section 3753, the company is not and may never be supported in any way by the State's General Fund or a guaranty by the State, a state agency or a division of the State. The State may not borrow or otherwise appropriate funds from the company.

§ 3755. Powers of the board

The board has full power, authority and jurisdiction over the company.

1. General authority. The board may perform all acts necessary or convenient in the exercise of any power, authority or jurisdiction over the company, either in the administration of the company or in connection with the business of the company to fulfill the purposes of this chapter.

2. Standard of performance. The board shall discharge its duties with the care, skill, prudence and diligence of a prudent board of directors acting in a similar enterprise and purpose.

3. Personal liability. The members of the board and officers or employees of the company are not liable personally, either jointly severally, for any debt or obligation created or incurred by the company.

4. President. The board shall appoint a president who shall serve as chief executive officer and may appoint other executive officers as it determines necessary.

5. Investment managers. The board shall appoint investment managers to oversee and manage the investment of assets of the company in a manner that safeguards the value of those assets and maximizes investment return commensurate with risk and liquidity restrictions contained in chapter 13.

A. An investment manager appointed by the board is subject to standards applicable to fiduciaries responsible for safeguarding assets of such a company. The investment manager must be appointed pursuant to a contract in writing that clearly establishes the fiduciary nature of the relationship of the fiduciary to the company.

B. The board shall set investment policy for the investment managers of the company through an investment committee composed of not fewer than 3 members nor more than 5 members of the board. Transactions in the sale or purchase of securities by an investment manager may be in a nominee name as designated by the board. Authority to acquire or sell securities for the company must be conveyed to the investment manager in writing by the investment committee.

C. In any agreement empowering the investment managers to act for or on behalf of the company, there must be provisions for periodic reporting by the managers respecting investments held in the name of the company, the yield received on such investments and any principal cash balances held by depositories or the investment managers.

D. Securities and property of the company must be held in a manner consistent with the requirements for mutual insurance companies set forth in this Title.

§ 3756. General powers

1. Powers. For the specific purpose of exercising the responsibilities granted in this chapter and effectuating the purposes of this chapter, the company has the powers otherwise granted to a casualty insurer and may:

- A. Hire employees or enter into contracts relating to the administration of a liability insurer;
- B. Declare a dividend when there is an excess of assets over liabilities and surplus requirements established in this Title; and
- C. Enter into agreements to reinsure all or part of the company's exposure to loss and to otherwise limit the risk to the company and manage its financial condition.

2. Assessments; plan of operation. The board shall:

- A. Assess policyholders to cover its expenses, claims, obligations and other funding needs consistent with this chapter and Title; and
- B. Develop and file with the superintendent for review and approval a plan of operation and any amendments to a plan of operation necessary or suitable to ensure the fair, reasonable and equitable administration of the company.

§ 3757. President and chief executive officer

1. Appointment. The president is appointed pursuant to section 3752, subsection 4. The president must be qualified by education and experience to manage an organization with financial and operational obligations to its policyholders and claimants.

2. Term. The president serves at the will of the board.

3. Compensation. The president is entitled to compensation as established by the board and is subject to any reasonable requirements, including bonding, established by the board.

4. Board member. The president is a member of the board pursuant to section 3752, subsection 5, but may not be the chair of the board.

5. Duties. The board, as part of its plan of operation, shall designate the powers and duties of the president. The president may, with direction from the board, assist in the development of the plan of operation and other start-up functions.

§ 3758. Funding; surplus

1. Initial funding. The company shall borrow funds pursuant to section 3753 for initial operating expenses. After consultation with the president and board, the superintendent shall set the rates for the first year of operation of the company.

2. Ongoing funding. The company:

A. Shall collect from each applicant an advance premium of 25% of the estimated annual premium and shall bill subsequent premiums with advance notice to insureds to ensure that, if periodic premiums are not paid by insureds in a timely manner, adequate time is available to give proper notice of cancellation prior to a previously collected premium being fully earned;

B. May assess its policyholders for additional funds to meet operating needs or as required by law; and

C. May provide premium payment plans and premium financing programs providing payment terms other than those specified in paragraph A. Until the company has obtained the surplus otherwise required under this Title for casualty insurance companies, the company must receive approval from the superintendent before implementing these programs.

3. Transition surplus, premium levels. Notwithstanding other provisions of this Title, the company is permitted to operate for a period of up to 10 years with a level of surplus less than that otherwise required for a mutual insurer authorized to write casualty insurance if the following conditions are met.

A. The superintendent shall set the confidence level, which is the probability that the provision of actual costs will be less than the actual costs by a certain percentage, for the company. The company shall establish its rates at a level to cover its anticipated overhead expenses and to cover, on a discounted basis, the actuarially determined incurred claims and claim-settlement costs at not less than the confidence level set by the superintendent.

B. The company shall annually file with the superintendent an actuarial analysis of its reserves and its proposed rate level. The company shall establish its reserves, including provisions for incurred but not reported reserves, at not less than the confidence level set by the superintendent.

C. Any surpluses from any fund year must be retained by the company and credited toward its surplus account. No surplus may be returned to policyholders or credited to other fund years until the superintendent has certified that the company has achieved the surplus level required of an assessable domestic mutual insurance company authorized to write casualty insurance.

D. Not later than 10 years from October 1, 2008, the company, through premiums, retained dividends, sale of bonds, assessments or any other legally authorized means, shall accumulate surplus and obtain certification from the superintendent that the company has obtained the surplus otherwise required under this Title. If the superintendent finds, after hearing, that inadequate surplus exists and the 10-year transition period has expired, the superintendent shall declare the company impaired and take appropriate action to rehabilitate or liquidate the company. If the superintendent finds that surplus is not being accumulated at an adequate rate consistent with its premium volume during the 10-year period, the superintendent shall so inform the board.

E. If the superintendent finds at the expiration of 10 years of company operations described in paragraph D, or earlier, that the company has accumulated or otherwise obtained surplus as required pursuant to this Title for casualty insurance companies operating on the cash plan, the requirements contained in paragraphs A to C terminate. The company shall at that point be subject to the standards of section 410 and other sections of this Title applicable to a mutual casualty insurer writing liability insurance.

§ 3759. Availability of coverage

On or before October 1, 2008, the company shall provide liability coverage to snowmobile and ATV clubs otherwise entitled to coverage but not able to or not electing to purchase coverage in the voluntary insurance market or to self-insure. The coverage provided under this chapter must include coverage to indemnify against personal liability any landowner who permits the operation of snowmobiles and all-terrain vehicles for recreational use on the landowner's property under an agreement with a snowmobile or ATV club.

Sec. 2. Initial terms of members of the Board of Directors of the Maine Snowmobile and ATV Club Mutual Liability Company. Other than the chief executive officer, of the initial members of the Board of Directors of the Maine Snowmobile and ATV Club Mutual Liability Company, 3 serve 3-year terms, 3 serve 2-year terms and 2 serve one-year terms.

SUMMARY

This bill establishes the Maine Snowmobile and ATV Club Mutual Liability Company to manage liability risks for snowmobile and ATV clubs in the State and to indemnify landowners.