

## STATE OF MAINE

—  
IN THE YEAR OF OUR LORD  
TWO THOUSAND AND THIRTEEN

—  
S.P. 255 - L.D. 706

**An Act To Amend the Workers' Compensation Self-insurance Laws**

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

**Sec. 1. 39-A MRSA §403, sub-§4-A,** as amended by PL 2009, c. 232, §2, is further amended to read:

**4-A. Group self-insurance reinsurance account.** As an alternative to obtaining a reinsurance contract providing coverage against losses arising out of one occurrence, 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. More than one account may be established pursuant to this subsection. An account established pursuant to this subsection may be established as either an independent private entity or an instrumentality of the State, but the debts and liabilities of an account established as an instrumentality of the State are not debts and liabilities of the State. An account established as an instrumentality of the State within 24 months of its formation, with the approval of the Superintendent of Insurance, may transfer all of its assets and liabilities into an account established as an independent private entity.

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

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

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

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

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

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

B. An account must operate in accordance with a plan of operation established by the group self-insurer members and approved by the Superintendent of Insurance.

(1) Those group self-insurers creating an account shall submit to the Superintendent of Insurance a plan of operation and any amendments to it that are necessary to ensure the fair, reasonable and equitable administration of the account. The plan of operation is effective upon approval by the superintendent. Any amendments subsequent to the plan's initial approval must be submitted to the superintendent by the plan's board of directors and are effective upon approval by the superintendent.

(2) The plan of operation must:

(a) Create a board of directors and initial bylaws, including the terms and conditions of board membership and the manner by which board members are initially appointed and are replaced when vacancies occur;

(b) Establish the procedures by which all the powers and duties of the account are performed, including, but not limited to, defining the date and conditions pursuant to which the account will commence coverage for claims by participating group self-insurer members and establishing provisions for determining limits of exposure for the account;

(c) Establish procedures for handling assets of a fund created pursuant to paragraph C;

(d) Establish underwriting rules and criteria by which rates are to be established;

- (e) Establish procedures by which claims may be filed with the account;
- (f) Establish an investment policy for a fund created pursuant to paragraph C;
- (g) Establish procedures for records to be kept of all financial transactions of the account, its agents and the board of directors;
- (h) Establish procedures for withdrawal from the account by a self-insurer member, which must, at a minimum, require 90 days' notice from the withdrawing self-insurer member to the board of directors and the Superintendent of Insurance;
- (i) Establish, subject to approval by the Superintendent of Insurance, a minimum level of funding to be achieved by the account; ~~and~~
- (j) Contain additional provisions necessary or proper for the execution of the powers and duties of the board of directors and the ability of the account to meet its obligations; and
- (k) Establish a standard per occurrence retention level for claims covered by the account.

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

- (1) To administer a self-insurance specific reinsurance account fund, to be known in this subsection as "a fund," which must receive payments from participating self-insurer members of the account as required by paragraph A. The costs of administration by the board of directors and expenses of the account must be borne by the fund;
- (2) In its discretion, to secure reinsurance for the fund's exposure and to otherwise invest the assets of the fund to effectuate the purpose of the account, subject to the approval of the Superintendent of Insurance;
- (3) To accept or reject applications of self-insurers to be underwritten by the account, subject to the approval of the Superintendent of Insurance;
- (4) To accept or reject applications of a self-insurer member to self-insure any exposure for one occurrence at a level other than ~~\$500,000~~ the standard retention level provided in the plan of operation established pursuant to paragraph B, subject to:
  - (a) Compliance with applicable provisions of the plan of operation established pursuant to paragraph B;
  - (b) Notice to and prior approval by the Superintendent of Insurance; and
  - (c) For ~~higher~~ other retention levels, a statement from that member's actuary that the member has adequately funded its additional exposure;
- (5) To create a mechanism for assessing participating self-insurer members if funds are insufficient to pay the claims of the account;

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

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

(8) To borrow funds;

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

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

D. An account is subject to examination and regulation by the Superintendent of Insurance. The board of directors of an account shall submit, within 120 days after the close of each fiscal year, an audited financial report and an actuarial report for the preceding fiscal year in a form approved by the superintendent. When the superintendent considers it necessary, the superintendent may require an account to maintain specific or aggregate reinsurance at such retention levels as the superintendent determines to be appropriate.

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

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

(2) If the Superintendent of Insurance determines, after reviewing the information filed pursuant to paragraph D, that a hazardous financial condition exists, the superintendent shall notify an account of the condition. Upon notification, an account shall implement within 30 days, or such other time as the superintendent approves, its plan to correct any deficiencies and within 90 days shall file with the superintendent proof of remedial action taken. If the superintendent is satisfied that the plan submitted to improve the inadequate condition of an account is sufficient, the superintendent shall notify the account.

The account shall report quarterly to the superintendent until any deficiencies and their causes have been corrected.

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

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

(1) Each participating self-insurer in an account has a contingent assessment liability in accordance with the plan of operation established pursuant to paragraph B for payment of claims and expenses incurred while a member of the account and must execute an agreement acknowledging that it is responsible for the prompt payment of all assessments necessary to ensure that the account is fully funded and that, if any participant in the account fails to pay an assessment when due for any reason, the remaining participants are liable for the shortfall.

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

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

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

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

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

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

L. With the approval of the Superintendent of Insurance, a self-insurance reinsurance account may create one or more protected cells under its plan of operation for the purpose of reinsuring obligations of group self-insurers that are organized under the

laws of another state. Any protected cell and all participating group self-insurers and their member employers are subject to the jurisdiction and oversight of the Superintendent of Insurance with respect to all matters relating to their participation on the account.

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

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

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

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

**Sec. 2. 39-A MRSA §403, sub-§9**, as amended by PL 1995, c. 398, §4, is further amended to read:

**9. Acceptable deposit funds or investments for trust funds.** In addition to cash, the deposit funds or permissible investments for trust funds acceptable to the Superintendent of Insurance as a security deposit are bonds, notes and bills that are issued by and are the direct obligation of the United States Treasury; ~~the direct obligations of the following United States Government agencies: the Government National Mortgage Association; the Federal Home Loan Bank; the Federal Farm Credit Bank; the Student Loan Marketing Association; and the Federal National Mortgage Association; the direct obligations of any state of the United States or any subdivision of any state to which are pledged the full faith and credit of the state or subdivision, the unsecured debt of which is rated "A" or better by Standard and Poor's Corporation or the rating equivalent of Moody's Investors Service, Inc., Fitch Investors Service, Inc. or any other nationally recognized statistical rating agency;~~ commercial paper rated as either "A-1" or "P-1" by Moody's Investors Service, Inc., Standard and Poor's Corporation or the rating equivalent of Fitch Investors Service, Inc. or any other nationally recognized statistical rating agency; money market funds rated "Aam" or "AAM-G" or better by Standard and Poor's Corporation or the rating equivalent of any other nationally recognized statistical rating agency; certificates of deposit issued by a duly chartered commercial bank or thrift institution in the State protected by the Federal Deposit Insurance Corporation if ~~such a~~ the bank or institution possesses assets of at least \$100,000,000 and maintains a ratio of

~~capital to assets equal to or greater than 6 1/2%; savings certificates issued by any savings and loan association in the State protected by the Federal Deposit Insurance Corporation if such an association possesses assets of at least \$100,000,000 and maintains a ratio of capital to assets equal to or greater than 6 1/2%; corporate bonds rated "Aaa," "Aa1" or "Aa2" by Moody's Investors Service, Inc., or rated "AAA," "AA+" or "AA" by Standard and Poor's Corporation, or the rating equivalent of Fitch Investors Service, Inc. or any other nationally recognized statistical agency, in an amount not to exceed 20% of the total investment portfolio; bonds that are issued by United States corporations, corporations acceptable to the superintendent or United States public entities and that are rated "A" or better by Standard and Poor's Corporation, or the rating equivalent of Moody's Investors Service, Inc., Fitch Investors Service, Inc. or any other nationally recognized statistical agency; and such other investments specifically approved by the superintendent. If an investment is downgraded so that it no longer meets the requirements of this subsection, its value may not be considered in determining whether a deposit or trust has surplus available for distribution, and the superintendent has discretion to discount or disallow the value of the investment for purposes of determining whether additional security is required.~~

Investments must be diversified in a prudent manner to ensure that funds are maintained at a sufficient level to discharge workers' compensation obligations incurred by the employer pursuant to this Title as those obligations become due and payable. At least 30% of the portfolio must consist of cash, direct obligations of the United States Treasury, commercial paper, money market funds or certificates of deposit. No more than 5% of the portfolio, other than cash and direct obligations of the United States, may be concentrated in a single issuer, and the superintendent shall establish standards to limit concentration in a single industry or market sector.