

**Maine Revised Statute Title 24-A, Chapter 52: MAINE
EMPLOYERS' MUTUAL INSURANCE COMPANY**

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24-A §3701. PURPOSE

The Maine Employers' Mutual Insurance Company is established for the purposes of providing workers' compensation insurance and employers' liability insurance incidental to and written in connection with workers' compensation coverage to employers of this State at the highest level of service and savings consistent with reasonable applicable actuarial standards and the sound financial integrity of the company. It is also the purpose of the company to encourage employer involvement and to be responsive to employer experience and advice. [2001, c. 350, §1 (AMD).]

SECTION HISTORY

1991, c. 615, §D1 (NEW). 1991, c. 885, §C1 (AMD). 1997, c. 661, §1 (AMD). 2001, c. 350, §1 (AMD).

24-A §3702. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1991, c. 615, Pt. D, §1 (NEW).]

1. Board. "Board" means the Board of Directors of the Maine Employers' Mutual Insurance Company.

[1991, c. 615, Pt. D, §1 (NEW) .]

2. Company. "Company" means the Maine Employers' Mutual Insurance Company created in section 3703.

[1991, c. 615, Pt. D, §1 (NEW) .]

3. Division.

[2001, c. 350, §2 (RP) .]

3-A. Maine-based employer. "Maine-based employer" means an employer with a principal place of business located in this State.

[1995, c. 551, §3 (NEW) .]

4. Superintendent. "Superintendent" means the Superintendent of Insurance.

[1991, c. 885, Pt. C, §2 (NEW) .]

5. Voluntary market. "Voluntary market" means the workers' compensation insurance market in which insurance companies voluntarily offer coverage to applicants who meet the insurers' underwriting standards or guidelines.

[1991, c. 885, Pt. C, §2 (NEW) .]

6. Workers' compensation residual market mechanism. "Workers' compensation residual market mechanism" means the instrument to provide coverage to employers not able to obtain coverage in the voluntary market that immediately preceded the Maine Employers' Mutual Insurance Company.

[2001, c. 350, §3 (AMD) .]

SECTION HISTORY

1991, c. 615, §D1 (NEW). 1991, c. 885, §C2 (AMD). 1995, c. 551, §3 (AMD). 1997, c. 661, §2 (AMD). 2001, c. 350, §§2,3 (AMD).

24-A §3703. ESTABLISHMENT

The Maine Employers' Mutual Insurance 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 or which 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 follows. [1991, c. 885, Pt. C, §3 (AMD).]

1. Workers' compensation. The company shall provide workers' compensation insurance and employers' liability insurance incidental to and written in connection with workers' compensation coverage to employers in this State. The company may provide employment practices liability insurance incidental to and written in connection with workers' compensation coverage for employers if the employment practices liability insurance is provided as an endorsement to workers' compensation coverage approved by the superintendent and is provided under terms and conditions, including reinsurance protection, approved by the superintendent. Rates for employment practices liability insurance are subject to chapter 25. The company may not write other lines of insurance. The company may reinsure workers' compensation and employers' liability insurance written by other insurers that are covering out-of-state employees of Maine-based employers that are insured by the company. For the purpose of providing insurance to Maine-based employers operating in other states, the company may apply to appropriate regulatory authorities in those states for authority to write workers' compensation, employers' liability and employment practices liability insurance for Maine-based employers' operations in those states. The company may form or acquire subsidiary insurers in other states that are authorized to write only workers' compensation insurance, employers' liability insurance and employment practices liability insurance as long as such coverage is incidental to and written in connection with workers' compensation coverage. The superintendent may authorize a subsidiary insurer formed or acquired by the company to write workers' compensation, employers' liability and employment practices liability insurance in this State as long as such coverage is incidental to and written in connection with coverage in the state in which the insured's principal place of business is located. The superintendent may not authorize a subsidiary insurer formed or acquired by the company to write any other line of insurance in this State.

[2009, c. 32, §1 (AMD) .]

2. Exclusion from guaranty funds. The company and its policyholders are exempt from participation 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.

[1991, c. 615, Pt. D, §1 (NEW) .]

3. Initial board of directors.

[1991, c. 885, Pt. C, §3 (RP) .]

4. Incorporation.

[1997, c. 661, §4 (RP) .]

5. Composition of the board. The board consists of up to 9 members. Six members must be officers, directors, employees, partners or members of policyholders who purchase workers' compensation coverage from the Maine Employers' Mutual Insurance Company. Two members must be persons who represent the public interest of the company and must be appointed by the Governor within 30 days after a new board member is authorized or a vacancy occurs, subject to review and comment by the joint standing committee of the Legislature having jurisdiction over banking and insurance matters. The designated committee shall complete its review within 15 days of the Governor's written notice of appointment. If the designated committee fails to act within the required 15 days, then the appointees put forward by the Governor become the required board members. One member must be an at-large policyholder member elected by the board. The

remaining board member is the president and chief executive officer who shall serve on the board of directors while employed as president and chief executive officer. The reduction in the number of board members from 13 to 9 must be done by attrition. The first 4 appointments to expire after September 1, 1998 may not be filled.

A member of the board may not be a lobbyist required to be registered with the Commission on Governmental Ethics and Election Practices, a service provider to the workers' compensation system or a representative of a service provider to the workers' compensation system.

[2005, c. 683, Pt. B, §19 (AMD) .]

6. Terms. A full term on the board of directors is 3 years. An individual may not serve more than 3 consecutive full terms as a director, except for the president and chief executive officer. All members shall serve for the terms provided and until their successors are appointed or elected and qualified.

[1999, c. 120, §1 (AMD) .]

7. Corporate governance. The board of directors shall 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.

[1997, c. 661, §6 (AMD) .]

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 of Insurance 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.

[1993, c. 1, §64 (COR) .]

9. Nominating committee. The board shall create a nominating committee. The nominating committee shall present to the board nominees for the at-large and the policyholder board member positions.

[1997, c. 661, §6 (AMD) .]

SECTION HISTORY

1991, c. 615, §D1 (NEW). 1991, c. 885, §C3 (AMD). RR 1993, c. 1, §64 (COR). 1995, c. 551, §4 (AMD). 1997, c. 661, §§3-6 (AMD). 1999, c. 120, §1 (AMD). 2005, c. 683, §B19 (AMD). 2007, c. 125, §1 (AMD). 2009, c. 32, §1 (AMD).

24-A §3704. PREREQUISITES TO OPERATIONS

(REPEALED)

SECTION HISTORY

1991, c. 615, §D1 (NEW). 1991, c. 885, §C4 (RP).

24-A §3704-A. INITIAL FUNDING AND OPERATION

(REPEALED)

SECTION HISTORY

1991, c. 885, §C5 (NEW). 1997, c. 661, §7 (RP).

24-A §3705. NONSTATE AGENCY

The company is not considered a state agency or instrumentality of the State for any purpose. The company is not and may never be supported in any way by the State's General Fund or any guaranty by the State, any state agency or a division of the State. The State may not borrow or otherwise appropriate funds from the company. [1991, c. 885, Pt. C, §6 (AMD).]

SECTION HISTORY

1991, c. 615, §D1 (NEW). 1991, c. 885, §C6 (AMD).

24-A §3706. REPORTS AND INFORMATION

1. Annual report. In addition to any other reports required by this Title, the board shall submit an annual report to the Governor and the joint standing committee of the Legislature having jurisdiction over insurance matters indicating the business done by the company during the previous year and containing a statement of the resources and liabilities of the fund and any other information considered appropriate by the board. The report must contain, at a minimum, a summary of the latest annual statement required to be filed with the superintendent prepared in accordance with statutory accounting principles.

[1991, c. 885, Pt. C, §7 (AMD) .]

2. Statistical and actuarial data. The company shall compile and maintain statistical and actuarial data related to the determination of proper premium rate levels, the incidence of work-related injuries, costs related to those injuries and any other data that the company considers desirable. The company shall provide this data to the Superintendent of Insurance, the Executive Director of the Workers' Compensation Board and the Department of Labor annually and upon request.

[2003, c. 608, §3 (AMD) .]

SECTION HISTORY

1991, c. 615, §D1 (NEW). 1991, c. 885, §C7 (AMD). 1991, c. 885, §D2 (AMD). 2003, c. 608, §3 (AMD).

24-A §3707. POWERS OF THE BOARD

The board has full power, authority and jurisdiction over the company. [1991, c. 885, Pt. C, §8 (NEW).]

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.

[1997, c. 661, §8 (AMD) .]

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

[1991, c. 885, Pt. C, §8 (NEW) .]

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.

[1991, c. 885, Pt. C, §8 (NEW) .]

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.

[1991, c. 885, Pt. C, §8 (NEW) .]

5. Investment managers. The board shall appoint investment managers to oversee and manage the investment of assets of the corporation 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 corporation. 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. [1991, c. 885, Pt. C, §8 (NEW).]

B. The board shall set investment policy for the investment managers of the company through an investment committee composed of not less 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. [1991, c. 885, Pt. C, §8 (NEW) .]

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. [1991, c. 885, Pt. C, §8 (NEW).]

D. Securities and property of the corporation must be held in a manner consistent with the requirements for mutual insurance companies set forth in this Title. [1991, c. 885, Pt. C, §8 (NEW).]

[1991, c. 885, Pt. C, §8 (NEW) .]

SECTION HISTORY

1991, c. 885, §C8 (NEW). 1997, c. 661, §8 (AMD).

24-A §3708. 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 workers' compensation insurer; [1991, c. 885, Pt. C, §8 (NEW).]

B. Declare a dividend when there is an excess of assets over liabilities and surplus requirements established in this Title; and [1991, c. 885, Pt. C, §8 (NEW).]

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. [1991, c. 885, Pt. C, §8 (NEW) .]

[1991, c. 885, Pt. C, §8 (NEW) .]

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 [1991, c. 885, Pt. C, §8 (NEW).]

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. [1991, c. 885, Pt. C, §8 (NEW).]

[1991, c. 885, Pt. C, §8 (NEW) .]

SECTION HISTORY

1991, c. 885, §C8 (NEW).

24-A §3709. PRESIDENT AND CHIEF EXECUTIVE OFFICER

1. Appointment. The board shall appoint a president who shall serve as chief executive officer and who is responsible for the operation of the company. The president must be qualified by education and experience to manage an organization with financial and operational obligations to its policyholders and claimants.

[1991, c. 885, Pt. C, §8 (NEW) .]

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

[1991, c. 885, Pt. C, §8 (NEW) .]

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.

[1991, c. 885, Pt. C, §8 (NEW) .]

4. Board member. The president is a member of the board, but may not be the chair of the board.

[1991, c. 885, Pt. C, §8 (NEW) .]

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.

[1991, c. 885, Pt. C, §8 (NEW) .]

SECTION HISTORY

1991, c. 885, §C8 (NEW).

24-A §3710. FUNDING; SURPLUS

1. Initial funding.

[1997, c. 661, §9 (RP) .]

2. Ongoing funding. The company:

A. [2001, c. 350, §4 (RP).]

B. May assess its policyholders for additional funds to meet operating needs or as required by law; and [1995, c. 551, §5 (AMD).]

C. May provide premium payment plans and premium financing programs. [2001, c. 350, §4 (AMD) .]

[2001, c. 350, §4 (AMD) .]

3. Transition surplus, premium levels.

[2001, c. 350, §4 (RP) .]

SECTION HISTORY

1991, c. 885, §C8 (NEW). 1995, c. 551, §§5,6 (AMD). 1997, c. 661, §9 (AMD). 2001, c. 350, §4 (AMD).

24-A §3711. OPERATION OF THE COMPANY

1. Coverage availability. On or after January 1, 1993, the company shall provide workers' compensation and incidental employers' liability coverage to employers otherwise entitled to coverage, but not able to or not electing to purchase coverage in the voluntary insurance market, and not authorized, either individually or as part of a group, to self-insure. An authorized self-insured is eligible for coverage upon termination of self-insurance.

[1991, c. 885, Pt. C, §8 (NEW) .]

2. Federal coverage. The board shall authorize the availability of federal workers' compensation coverage under the Longshore and Harbor Workers' Compensation Act, 33 United States Code, Section 901, et seq., the Defense Base Act, 42 United States Code, Section 1651, et seq., the Federal Employers Liability Act, 45 United States Code, Section 51, et seq., and any federal maritime or admiralty coverage. The board is authorized to make available Outer Continental Shelf Lands Act, 43 United States Code, Section 1331, et seq., coverage, Nonappropriated Fund Instrumentalities Employees' Retirement Credit Act of 1986, 5 United States Code, Section 8171, et seq., coverage, and any other coverages by special endorsements that may be required of an insured by contract or other needs.

[1991, c. 885, Pt. C, §8 (NEW) .]

3. Coverage denial. The company shall deny coverage to any employer who owes undisputed premiums to a previous workers' compensation carrier or to the workers' compensation residual market mechanism, or fails to comply with reasonable safety requirements the company is legally authorized to establish.

[1991, c. 885, Pt. C, §8 (NEW) .]

SECTION HISTORY

1991, c. 885, §C8 (NEW).

24-A §3712. DIVISIONS

(REPEALED)

SECTION HISTORY

1991, c. 885, §C8 (NEW). RR 1993, c. 1, §65 (COR). 1995, c. 560, §G9 (AMD). 1997, c. 661, §10 (RP).

24-A §3712-A. DIVISIONS

(REPEALED)

SECTION HISTORY

1997, c. 661, §11 (NEW). 2001, c. 350, §5 (RP).

24-A §3713. AUTHORITY TO CONTRACT WITH LICENSED PRODUCERS

The company may contract with licensed producers to submit applications and otherwise assist applicants and insureds. [1997, c. 661, §12 (AMD).]

SECTION HISTORY

1991, c. 885, §C8 (NEW). 1997, c. 661, §12 (AMD).

24-A §3714. ACCOUNTING; ASSESSMENTS

The following provisions apply to the financial operation of the company. [2001, c. 350, §6 (AMD).]

1. Separate accounting.

[2001, c. 350, §7 (RP) .]

2. Rates. Rates developed and filed by the company must be in accordance with chapter 25, subchapter II-B.

Rates filed within the rate-band are considered voluntary for purposes of chapter 25, subchapter II-B. If a rate is filed outside the rate band, the superintendent may disapprove the rate if it is excessive, inadequate or unfairly discriminatory, using the standards set forth in section 2382.

"Rate band" means the range of rates from 85% to 145% of the benchmark rate. For the purposes of this subsection, "benchmark rate" is the pure premium rate filing filed by the State's advisory organization as defined in section 2381-C and currently approved by the superintendent.

[1997, c. 661, §13 (AMD) .]

3. Deficit.

[2001, c. 350, §8 (RP) .]

4. Surplus. The surplus of the company is indivisible and is available for the benefit of all policyholders once certified by the superintendent.

[1991, c. 885, Pt. C, §8 (NEW) .]

5. Assessment. Any assessment levied against policyholders is for the exclusive benefit of the policyholders subject to the assessment. Any policyholder not paying an undisputed assessment is not eligible for coverage from the company or in the voluntary market.

[1997, c. 661, §13 (AMD) .]

6. Deficits in the high-risk division.

[2001, c. 350, §9 (RP) .]

7. High-risk program. The company shall maintain a high-risk program subject to the following provisions.

A. An employer must be placed in the high-risk program if the employer has at least 2 lost-time claims, each greater than \$10,000 of incurred loss, and a loss ratio greater than 1.0 during the previous 3-year experience rating period. Notwithstanding paragraph C, an employer may also be placed in the high-risk program during the term of a policy for noncompliance with reasonable safety standards. [2001, c. 350, §10 (NEW).]

B. The board, with the approval of the superintendent, may modify the eligibility standards for the high-risk program if those standards limit those in the program to employers who have measurably adverse loss experience, have a relatively high claim frequency record or have demonstrated an attitude or practice of noncompliance with reasonable safety requirements or claims management standards. [2001, c. 350, §10 (NEW).]

C. Eligibility requirements must be applied annually at the policy renewal date or, if the necessary claim history is not available at that time, 30 days after notice to the insured. [2001, c. 350, §10 (NEW).]

D. Deductibles in the high-risk program are subject to this paragraph.

(1) A deductible applies to all coverage for policyholders in the high-risk program that meet the following qualifications:

- (a) A net annual premium of \$20,000 or more, subject to adjustment pursuant to this paragraph, in the State;
- (b) A premium not subject to retrospective rating; and
- (c) The policyholder's threshold loss ratio is 1.0 or greater.

The deductible is \$1,000 a claim but applies only to wage loss benefits paid on injuries occurring during the year of coverage. The sum of all deductibles in one year of coverage may not exceed the lesser of 15% of net annual payment for coverage or \$25,000. Each loss to which a deductible applies must be paid in full by the company. After the year of coverage has expired, the policyholder shall reimburse the company the amount of the deductibles. This reimbursement is considered as payment for coverage for purposes of cancellation or nonrenewal.

The board shall adjust annually the \$20,000 payment-of-coverage level established in this subparagraph to reflect any change in rates for the high-risk program and any change in wage levels in the preceding calendar year. Changes in wage levels are determined by reference to changes in the state average weekly wage, as computed by the Department of Labor. Any adjustment is rounded off to the nearest \$1,000 increment.

(2) The board may modify, with the approval of the superintendent, the mandatory deductible elements. Any modification or elimination of this rating feature must consider the incentive impact on an employer, the reasonableness of the retained cost relative to the claim history, safety record or claims management practices of affected employers and the ability of all employers to absorb these costs. [2001, c. 350, §10 (NEW).]

E. The board may file with the superintendent retrospective rating plans that, after hearing, may be imposed on an employer with a demonstrated record of repeated serious violations of workplace health and safety rules and regulations such as those adopted under Title 26, chapter 6 or 29 United States Code, Chapter 15, whichever is applicable. [2001, c. 350, §10 (NEW).]

F. The board shall develop and file with the superintendent and, if not disapproved by the superintendent, make available to policyholders on a voluntary basis retrospective rating plans. [2001, c. 350, §10 (NEW).]

G. Not more than 30 days after assignment to the high-risk program, a policyholder may appeal the assignment in writing to the bureau. [2001, c. 350, §10 (NEW).]

H. The board, with the approval of the superintendent, shall implement a plan for surcharges for policyholders in the high-risk program based on the policyholder's specific loss experience beyond the uniform experience rating plan approved by the superintendent. Any plan of surcharges must consider the actual claims experience of the employer and must provide for rate adjustments reasonably related to the employer's risk of loss. [2001, c. 350, §10 (NEW).]

[2001, c. 350, §10 (NEW) .]

SECTION HISTORY

1991, c. 885, §8 (NEW). RR 1993, c. 1, §66 (COR). 1997, c. 661, §13 (AMD). 2001, c. 350, §§6-10 (AMD).

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