

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

## An Act Relating to Self-insurance

**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 2003, c. 671, Pt. A, §§11 and 12, 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, a group self-insurer authorized under the laws of this State or any other state, or an individual self-insurer authorized under this section may participate in a group self-insurance reinsurance account, referred to in this subsection as "an account," as provided in this subsection. 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~~Superintendent of Insurance, may transfer all of its assets and liabilities into an account established as an independent private entity.

A. ~~Any~~A group self-insurer that is subject to joint and several liability pursuant to subsection 4, paragraph F or a group self-insurer authorized under the laws of another state and that executes an agreement to be jointly and severally liable in accordance with the provisions of paragraph F or an individual self-insurer authorized under this section that executes an agreement to be jointly and severally liable 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 ~~group~~ 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 consistent with the plan of operation established pursuant to paragraph B.

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

(4) A group 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 group self-insurer's participation in an account is considered as a component of the group self-insurer's renewal application. A group 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 group 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 group self-insurer member, which must, at a minimum, require 90 days' notice from the withdrawing group 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.

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 group self-insurance specific reinsurance account fund, to be known in this subsection as "a fund," which must receive payments from participating group 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 group 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 group self-insurer member to self-insure any exposure for one occurrence at a level other than \$500,000, subject to:

(a) Compliance with applicable provisions of the plan of operation established pursuant to paragraph B;

(b) Notice to and approval by the Superintendent of Insurance; and

(c) For higher 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 group 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 group self-insurer members. Rates are subject to approval by the Superintendent of Insurance;

(7) To associate with a participating group 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 group 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~~ 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 group 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~~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~~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 group self-insurer's liability for participating in an account is governed by this paragraph.

(1) Each participating group 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.

(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 group 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 group 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.

### **SUMMARY**

This bill amends the laws relating to group self-insurance reinsurance accounts to clarify that individual self-insurers authorized under Maine law and group self-insurers authorized under the laws of other states may participate in the account.