

MAINE STATE LEGISLATURE

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FIRST SPECIAL SESSION

ONE HUNDRED AND SIXTH LEGISLATURE

Legislative Document

No. 2292

H. P. 1811

House of Representatives, January 3, 1974

Referred to the Committee on Labor. Sent up for concurrence and ordered printed.

E. LOUISE LINCOLN, Clerk

Presented by Mr. Smith of Dover-Foxcroft.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-FOUR

AN ACT Providing for a Workmen's Compensation Insurance Fund.

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

Sec. 1. R. S., T. 39, c. 6, additional. Title 39 of the Revised Statutes is amended by adding a new chapter 6 to read as follows:

CHAPTER 6

WORKMEN'S COMPENSATION INSURANCE FUND

§ 201. Fund

There is hereby created and established a fund to be known as the "Workmen's Compensation Insurance Fund," to be administered by the Workmen's Compensation Insurance Fund Board, hereinafter in this chapter called the "board," for the purpose of insuring all employers against liability for injuries sustained by their employees compensable under this Act and for the purpose of insuring to employees and other persons the compensation and benefits provided by said Act for employees and their dependents. It is the intention of the Legislature that the said fund shall be the sole provider of insurance for liability for injuries compensable under this Act.

§ 202. No proprietary interest by State

The State declares that it has no proprietary interest in the Workmen's Compensation Fund or in the contributions made to the fund created.

§ 203. Rates

The Workmen's Compensation Insurance Fund shall be subject to the rate making laws and regulations of the Insurance Superintendent as provided by

law and the payment of taxes and the making of reports to other state agencies as provided by law.

§ 204. Liability

The Workmen's Compensation Insurance Fund may insure employers against their liability for compensation or damages under the United States Longshoremens' and Harbor Workers' Compensation Act or any extension of that Act.

§ 205. Contents

The Workmen's Compensation Insurance Fund, hereinafter in this chapter called the "fund" shall consist of:

1. All premiums received and paid into the fund for insurance issued by it;
2. All property and securities acquired by and through the use of moneys belonging to the fund and acquired by gift or otherwise;
3. All interest earned upon moneys belonging to the fund and deposited or invested as provided in this Act.

§ 206. Self-supporting

The fund shall, after a reasonable time during which to establish itself, become neither more nor less than self-supporting. For that purpose, loss experience and expense shall be ascertained and dividends or credits may be made as provided in this Act. The fund shall be exempt from any financial or budgetary control or supervision by any state agency except for the audit made by the Insurance Superintendent.

§ 207. Dividends

The actual loss experience and expense of the fund shall be ascertained on or before the first of July in each year for the calendar year preceding. If it is then shown that there exists an excess of assets over liabilities, necessary reserves, and a reasonable surplus for the catastrophe hazard, then a cash dividend may be declared to, or credit allowed on the renewal premium of each employer who has been insured with the fund. Such cash dividend or credit is to be in an amount which the board in its discretion considers to be the individual employer's proportion of divisible surplus.

§ 208. Payment of losses

The assets of the fund shall be applicable to the payment of losses sustained on account of insurance and to the payment of the salaries and all other administrative expenses charged against it.

§ 209. Real estate

The fund may acquire, own, sell and repurchase real property for its offices when so determined by the board.

§ 210. Custodian

The Treasurer of State shall be the custodian of all moneys and securities belonging to the fund except as provided in this Act. He shall be liable on his official bond for their safekeeping.

§ 211. Deposits

All moneys which belong to the fund and are collected or received under this Act shall be delivered to the Treasurer of State or deposited to his credit in such bank or banks throughout the State as he designates but such moneys are not state moneys.

§ 212. Securities

All securities belonging to the fund shall be delivered to the Treasurer of State and held by him until otherwise disposed of as provided by this Act.

§ 213. Expenditures

Upon such delivery or deposit, such moneys and securities shall be credited by the Treasurer of State to the fund. No moneys received or collected on account of the fund shall be expended or paid out without first passing into the State Treasury and being drawn therefrom as provided in this Act.

§ 214. Ledger account

The Treasurer of State shall keep a special ledger account showing all of the assets pertaining to the fund. In the Treasurer of State's general ledger this account may appear as a cash account, like other accounts of funds in the State Treasury and only the actual cash coming into the fund shall be entered in the account.

§ 215. Revolving fund

The board may withdraw from the fund in the State Treasury, without at the time presenting vouchers and itemized statements, a sum not to exceed in the aggregate \$100,000 to be used as a revolving fund. Such revolving fund shall be deposited in such banks and under such conditions as the board shall decide.

§ 216. —expenditures

Expenditures made from the revolving fund in payments made in connection with the insurance business transacted by the fund are exempted from the restrictions imposed upon the expenditures of state moneys. Reimbursement of the revolving fund shall be made upon presentation to the Treasurer of State of an abstract or statement of such expenditures. Such abstract shall be in the form required by the Treasurer of State.

§ 217. Investments

The board shall cause all moneys in the fund which are in excess of current requirements to be invested and reinvested, from time to time, in securities authorized by law for the investment of funds of savings banks.

§ 218. Deposits

All moneys in the fund, in excess of current requirements and not otherwise invested may be deposited by the Treasurer of State from time to time in banks authorized by law to receive deposits of public moneys, under the same rules and regulations that govern the deposit of public funds. The interest accruing thereon shall be credited to the fund.

§ 219. Valuation

During the months of January and July of each year, the board shall cause a valuation to be made of the properties and securities acquired and held for the fund and shall report the results of the valuation to the Governor and Insurance Superintendent.

§ 220. Acts

All business and affairs of the fund including any litigation shall be conducted in the name of the fund, and in that name, without any other name or title, the board or the executive director of the fund may perform the acts authorized by this chapter.

§ 221. Reimbursement

The fund shall annually reimburse the State Treasury for services performed as custodial of the moneys of the fund.

§ 222. Duties of board

The board may:

1. Sue and be sued in all actions arising out of any act or omission in connection with its business or affairs. Service of process in suits affecting the fund shall be made upon the executive director of the fund and he shall be responsible for initiating all litigation necessary in the affairs of the fund. The board shall provide for its own legal services, by contract or otherwise, in respect to such litigation;

2. Enter into any contracts or obligations relating to the fund which are authorized or permitted by law;

3. Invest and reinvest the moneys belonging to the fund as provided by this chapter;

4. Conduct all business and affairs and perform all acts relating to the fund whether or not specifically designated in this chapter.

§ 233. Reports to Insurance Superintendent

The statistical and actuarial data compiled by the fund shall at all times be available to the Insurance Superintendent for his use in judging the adequacy or inadequacy of rates and schedules filed. The executive director of the fund shall make to the Insurance Superintendent reports required by law to be made to him.

§ 224. Board

The board shall be composed of 5 members appointed by the Governor with the consent of the Council. Two of the members shall be policyholders or representatives thereof and 2 shall be employees of a policyholder in the fund. With exception of appointments in the first instance, at least 4 of the members, in order to qualify for membership on the board shall have been a policyholder or the employee of a policyholder in the fund for one year prior to his appointment and must continue in such status during the period of his membership. The members shall be appointed for terms of 5 years each, except that of the members first appointed, one shall be appointed for a term of one year; one for a term of 2 years; one for a term of 3 years; one for a term of 4 years; one for a term of 5 years. They shall serve until their successors are appointed and have qualified. Vacancies shall be filled for the unexpired terms.

§ 225. —chairman

The Governor shall appoint annually in January from its members a chairman and vice-chairman who shall act as chairman in the absence of the chairman.

§ 226. —powers

The board is vested with full power, authority and jurisdiction over the fund. The board may perform all acts necessary or convenient in the exercise of any power, authority or jurisdiction over the fund, either in the administration thereof or in connection with the insurance policies to be carried on by it under this chapter subject to such regulation as provided.

§ 227. —rules and regulations

The board shall have the authority to adopt rules and regulations relating to the conduct of the business of the fund.

§ 228. —meetings; quorum

The board shall meet at least once in each month and at such other times as it may determine or the business of the fund may require. Three or more members present and voting at a meeting in the conduct of the affairs of the board shall constitute a quorum. The action of 3 or more members present shall be the action of the board.

§ 229. —compensation

The members of the board shall be entitled to receive as compensation \$30 per diem for each day actually spent in attendance upon meetings of the board or on the business thereof, together with their actual and necessary traveling and other expenses incurred in connection therewith.

§ 230. —audit

The board shall have an annual audit of the books and records of the fund made by a duly qualified certified public accountant and shall cause an abstract summary of this audit to be published.

§ 231. Executive director

The board shall appoint an executive director of the fund and fix his salary. The executive director shall manage and conduct the business and affairs of the fund under the general direction and subject to the approval of the board and shall perform such other duties as the board shall prescribe.

§ 232. —bond

The executive director before entering on the duties of his office shall qualify by giving an official bond approved by the board, in such sum as the board may order and by taking and subscribing to an official oath. The approval of the board shall be by written endorsement on the bond. The bond shall be filed in the office of the Secretary of State.

§ 233. —duties

The board may delegate to the executive director of the fund, under such rules and regulations and subject to such conditions as it may from time to time prescribe, any power, function or duty conferred by law on the board in connection with the fund or in connection with the administration, management and conduct of business and affairs of the fund. The executive director may exercise such powers and functions and perform such duties with the same force and effect as the board, but subject to its approval.

§ 234. —employees

Subject to the approval of the board, the executive director shall appoint all employees.

§ 235. —additional duties

In conducting the business and affairs of the fund, the executive director may:

1. Enter into contracts of workmen's compensation insurance and other liability authorized under this Act;
2. Sell annuities covering compensation benefits;
3. Decline to insure any risk in which the minimum requirement of safety fixed by statute or regulation of the State with regard to a safe place of employment are not complied with, or which is beyond the safe carrying of the fund. Otherwise, he shall not refuse to insure any workmen's compensation risk under state law, tendered with premium therefor;
4. Reinsure any risk or any part thereof;
5. Cause to be inspected and audited the payrolls of employers applying to the fund for insurance;
6. Make rules for the settlement of claims against the fund;
7. Contract with physicians, surgeons, hospitals and rehabilitation facilities for medical, surgical and rehabilitation treatment and the care and nursing of injured persons entitled to benefits under this Act;

8. Make safety inspections of risks and furnish advisory services;
9. Act for the fund in the collection and disbursements of all moneys necessary for administration of the fund and the conduct of the business of the fund;
10. Each quarter the executive director of the fund shall make a report to the Governor of the business done by the fund during the previous quarter and a statement of the fund's resources and liabilities at the close of that previous quarter.

§ 236. Declaration of necessity and public purpose

It is declared that there exists a need to establish this Workmen's Compensation Insurance Fund immediately, inasmuch as a substantial percentage of Maine's workers are currently unable to secure the benefits of similar insurance by any other means. It is further declared that the establishment of said fund is a public purpose and use for which public money may be spent and private property acquired and that said establishment is a function of state concern.

§ 237. Power to issue revenue bonds

The Workmen's Compensation Insurance Fund Board is hereby authorized to issue revenue bonds and notes and refunding bonds and notes for the purpose of organizing, establishing an initial fund and continuing operations and exercising all powers of the board.

§ 238. Credit of State not pledged

Said bonds shall not create a pledge of the faith or credit of the State of Maine but shall be totally dependent for repayment upon receipt of premium dollars from employers.

§ 239. Bondholder's rights against fund

The board shall cause to be written one or more bond resolutions for the issuance of the revenue bonds hereby authorized which resolution shall clearly define those assets of the fund upon which bondholders shall have first claim. In any case in which payments to claimants under the fund shall conflict with repayment of bondholders, the statement of priority found in the resolution shall control. In any case, the board shall insure that the fund as supported by employer premiums is sufficient at all times after a reasonably necessary start-up period, to repay bondholders their full investment with established interest.

§ 240. Tax exemption

Bonds issued under this chapter, being for essential and governmental purpose, shall be exempt from taxation.

§ 241. No personal liability

No person connected with issuance of these bonds shall be personally liable on the bonds by reason of the issuance thereof.

§ 242. Negotiability of bonds

Whether or not the bonds are of such form and character as to be negotiable instruments under the Uniform Commercial Code, Article 8, the bonds shall be and are hereby made negotiable instruments within the meaning of and for all the purposes of the Uniform Commercial Code, Article 8, subject only to the provisions of the bonds for registration.

Sec. 2. R. S., T. 39, § 2, sub-§ 1, amended. Subsection 1 of section 2 of Title 39 of the Revised Statutes is amended to read as follows:

1. **Assenting employer.** "Assenting employer" shall include all private employers who have become assenting employers in accordance with sections 21 to 27, and 201 to 235, and it shall include all towns voting to accept the Act. This Act shall be compulsory as to the State, counties, cities, water districts and all other quasi-municipal corporations of a similar nature, but said sections 21 to 27 and 201 to 235 shall not apply thereto or to assenting towns.

Sec 3 R. S., T. 39, § 2, sub-§ 6, amended. Subsection 6 of section 2 of Title 39 of the Revised Statutes is amended to read as follows:

6. **Employer.** "Employer" shall include corporations, partnerships, natural persons, the State, counties, water districts and all other quasi-municipal corporations of a similar nature, cities, and such towns as vote to accept this Act; ~~and if the employer is insured, it includes the insurer unless the contrary intent is apparent from the context or it is inconsistent with the purposes of this Act.~~

Sec. 4. R. S., T. 39, § 2, sub-§§ 7 and 8, repealed. Subsection 7, as amended, and subsection 8 of section 2 of Title 39 of the Revised Statutes are repealed.

Sec. 5. R. S., T. 39, § 21, amended. The first 2 paragraphs of section 21 of Title 39 of the Revised Statutes, as amended, are further amended to read as follows:

Every private employer subject to this Act, who has secured the payment of compensation in conformity with sections 21 to 27 and 201 to 235, shall be conclusively presumed to be an assenting employer with respect to employees other than those engaged in domestic service or in agriculture as seasonal or casual farm laborers, subject to the provisions hereinafter stated.

Any private employer who has elected not to be an assenting employer by not securing the payment of compensation under sections 21 to 27 and 201 to 235, shall, in a civil action brought by the employee other than one engaged in domestic service or in agriculture as a seasonal or casual farm laborer to recover for personal injuries or death sustained after such election by the employer, arising out of and in the course of his employment, not be entitled to the defenses set forth in section 3.

Sec. 6. R. S., T. 39, § 22, repealed. Section 22 of Title 39 of the Revised Statutes, as amended, is repealed.

Sec. 7. R. S., T. 39, § 23, sub-§ 1, repealed and replaced. Subsection 1 of section 23 of Title 39 of the Revised Statutes is repealed and the following enacted in place thereof:

1. By insuring and keeping insured the payment of such compensation and other benefits under an insurance policy with the Workmen's Compensation Insurance Fund, in accordance with sections 201 to 235.

Sec. 8. R. S., T. 39, § 24, amended. Section 24 of Title 39 of the Revised Statutes, as amended, is further amended to read as follows:

§ 24. Voluntary election

Any private employer may become an assenting employer with respect to his employees, and the act of the employer in securing the payment of compensation to such employee or class of employees in conformity with sections 21 to 27 and 201 to 235 shall constitute as to such employer his election to become an assenting employer without any further act on his part, but only with respect to that employee or that class of employees with respect to whom the employer has secured compensation as provided in sections 21 to 27, and 201 to 235, provided that, as to any employer who secures compensation by making a contract of industrial accident insurance, such election shall be deemed to have been made on the effective date of the insurance policy. Such election to be an assenting employer shall be deemed to continue as long as compensation continues to be secured as provided.

Sec. 9. R. S., T. 39, § 25, amended. The last sentence of section 25 of Title 39 of the Revised Statutes is amended to read as follows:

An employer who is authorized to substitute a plan under sections 21 to 27 and 201 to 235, shall give his employees notice thereof in a form to be prescribed by the commission, and a statement of the plan approved shall be filed with the commission.

Sec. 10. R. S., T. 39, § 27, amended. Section 27 of Title 39 of the Revised Statutes is amended to read as follows:

§ 27. Preservation of existing employer status

An employer with a currently approved industrial accident policy, or a currently accepted self-insurer, within sections 21 to 27 and 201 to 235, shall be considered in compliance with this Act until the expiration or cancellation date of the current assent based thereon.

Sec. 11. R. S., T. 39, § 28, amended. The first sentence of section 28 of Title 39 of the Revised Statutes is amended to read as follows:

An employee of an employer, who shall have assented to become subject to this Act as provided in sections 21 to 27 and 201 to 235, shall be held to have waived his right of action at common law to recover damages for the injuries sustained by him, and under the statutes specified in section 4, if he shall not have given his employer at the time of his contract of hire notice in writing that he claimed such right, and within 10 days thereafter have filed a copy thereof with the commission; or, if the contract of hire was made before the

employer so elected, if the employee within 10 days after knowledge by him of such assent shall not have given said notice and filed a copy thereof with the commission.

STATEMENT OF FACT

The purpose of this bill is reflected in the title.