

# MAINE STATE LEGISLATURE

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L.D. 249

(Filing No. H-319 )

STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
112TH LEGISLATURE  
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 215, L.D. 249,  
Bill, "AN ACT Relating to the Maine Self-Insurance  
Guarantee Association."

Amend the bill by striking out everything after  
the enacting clause and before the statement of fact  
and inserting in its place the following:

'Sec. 1. 39 MRSA §23, sub-§7-A is enacted to  
read:

7-A. Form of excess contracts. All primary ex-  
cess insurance contracts issued or renewed after the  
effective date of this subsection shall name the  
self-insurer and the Maine Self-Insurance Guarantee  
Association as coinsureds to the extent of their re-  
spective interests. These excess contracts shall  
recognize the Maine Self-Insurance Guarantee Associa-  
tion's rights of recovery, within the terms of cover-  
age provided by the contract, for payments made by  
the association to or on behalf of claimants regard-  
ing covered claims and for claims in the course of  
settlement, the value of which when reduced to pay-  
ments will create an obligation on the part of the  
excess carrier to reimburse the association to the  
extent of funds disbursed by the association to dis-  
charge covered claims. The requirements of this sub-  
section shall apply to any excess contract issued to  
any individual or group self-insurer as part of a  
self-insurance program approved for use within this  
State and shall be in addition to any other require-  
ment applicable to excess contracts imposed by law or  
rule.

Excess insurance contracts shall further specify that  
the excess carrier and the Maine Self-Insurance Guar-

COMMITTEE AMENDMENT "A" to H.P. 215, L.D. 249

1     antee Association may enter into agreements on the  
2     terms of settlement and distribution of benefits ac-  
3     cruing to claimants within the limits of the authori-  
4     ty of the parties to make settlements with respect to  
5     any coverage year.

6     To the extent that the Maine Self-Insurance Guarantee  
7     Association succeeds to a recovery of benefits from  
8     any excess carrier on behalf of claimants, those ben-  
9     efits shall be timely disbursed by the association to  
10    or on behalf of claimants as they become due and pay-  
11    able pursuant to this Act. Funds recovered under  
12    primary excess contracts on behalf of claimants shall  
13    be applied consistent with the terms of coverage un-  
14    der the contract, to loss, loss adjustment expense  
15    and attorneys' fees which are payable under the Act.

16           Sec. 2. 39 MRSA §23-A, sub-§1, as amended by PL  
17     1983, c 649, §1, is further amended to read:

18           1. Created. There is created a Maine Self-  
19     Insurance Guarantee Association to provide mechanisms  
20     for the payment of covered claims under self-  
21     insurance coverage, to avoid excessive delay in pay-  
22     ment, to avoid financial loss to claimants because of  
23     the insolvency of a self-insurer and to assist in the  
24     detection and prevention of self-insurer  
25     insolvencies, when called upon to do so by the super-  
26     intendent, in the detection of self-insurer  
27     insolvencies. It is declared that the Maine Self-  
28     Insurance Guarantee Association is an instrumentality  
29     of the State, provided that the debts and liabilities  
30     of the association shall not constitute debts and li-  
31     abilities of the State.

32           Sec. 3. 39 MRSA §23-A, sub-§4, ¶A, as amended by  
33     PL 1981, c. 637, §§5 and 6, is further amended to  
34     read:

35           A. The association shall:

36                 (1) Obtain from each member and file with

COMMITTEE AMENDMENT "A" to H.P. 215, L.D. 249

1 the superintendent individual reports speci-  
2 fying the aggregate benefits each member  
3 paid during the previous calendar year, and  
4 the annual standard premium which would have  
5 been paid by each self-insurer during the  
6 previous calendar year pursuant to manual  
7 rates established by the principal rating  
8 organization in the State and using the ex-  
9 perience rating procedure approved by the  
10 Superintendent of Insurance for that self-  
11 insurer. These reports shall be due on or  
12 before July 15th following the close of that  
13 calendar year, except that this deadline may  
14 be extended by the superintendent for up to  
15 3 additional months for good cause shown;

16 (2) Assess each member of the association  
17 as follows:

18 (a) Each individual self-insurer shall  
19 be annually assessed an amount equal to  
20 1% of the annual standard premium which  
21 would have been paid by that individual  
22 self-insurer during the prior calendar  
23 year; payment to the association shall  
24 be made no later than September 15th  
25 following the close of that calendar  
26 year. Where any such assessment is paid  
27 based in whole or in part upon esti-  
28 mates of annual standard premium for  
29 the prior calendar year, there shall be  
30 made in the next year's assessment an  
31 adjustment of the assessment of such  
32 prior year based on actual audited an-  
33 nual standard premium. Regardless of  
34 the size of the fund referred to in  
35 subparagraph (3), during its first 12  
36 months of membership, no individual  
37 self-insurer may discount or reduce  
38 this 1% assessment;

39 (b) Each group self-insurer shall be

COMMITTEE AMENDMENT "A" to H.P. 215, L.D. 249

1                   annually assessed an amount equal to  
2                   .1% of the total annual standard premi-  
3                   um which would have been paid by all  
4                   the members of that group self-insurer  
5                   during the prior calendar year; payment  
6                   to the association shall be no later  
7                   than September 15th following the close  
8                   of that calendar year. Where any such  
9                   assessment is paid based in whole or in  
10                  part upon estimates of annual standard  
11                  premium for the prior calendar year,  
12                  there shall be made in the next year's  
13                  assessment an adjustment of the assess-  
14                  ment of such prior year based on actual  
15                  audited annual standard premium. Re-  
16                  gardless of the size of the fund re-  
17                  ferred to in subparagraph (3), during  
18                  its first 12 months of membership, no  
19                  group self-insurer may discount or re-  
20                  duce this .1% assessment-;

21                  (c) Each member self-insurer shall be  
22                  notified of the assessment no later  
23                  than 30 days before it is due;

24                  (d) If a self-insurer is a member of  
25                  the association for less than a full  
26                  calendar year, the annual standard pre-  
27                  mium shall be adjusted by that portion  
28                  of the year the self-insurer is not a  
29                  member of the association; and

30                  (e) If application of the contribution  
31                  rates referred to in divisions (a) and  
32                  (b) would produce an amount in excess  
33                  of the limits of the fund established  
34                  in subparagraph (3) an equitable prora-  
35                  tion shall be made;

36                  (3) Administer a fund, to be known as the  
37                  Maine Self-Insurance Guarantee Fund, which  
38                  shall receive the assessments required in

COMMITTEE AMENDMENT "A" to H.P. 215, L.D. 249

1 subparagraph (2). This fund shall not exceed  
2 \$1,000,000, except that once the fund  
3 reaches \$1,000,000, the fund shall not ex-  
4 ceed \$1,000,000 plus all subsequent initial  
5 assessments of new member self-insurers  
6 which are required to be made in subpara-  
7 graph (2), divisions (a) and (b). The costs  
8 of administration by the association shall  
9 be borne by the fund, and the association is  
10 authorized to secure reinsurance and bonds  
11 and to otherwise invest the assets of the  
12 fund to effectuate the purpose of the asso-  
13 ciation, subject to the approval of the Su-  
14 perintendent of Insurance.

15 (a) The association may purchase pri-  
16 mary excess insurance from an insurer  
17 licensed in this State for the appro-  
18 prate lines of authority to defray its  
19 exposure to loss occasioned by the de-  
20 fault of one or more of its members.  
21 Any excess insurance so purchased shall  
22 be limited to coverage of  
23 post-assessment liability of the asso-  
24 ciation's members and the association  
25 shall fund any such purchase by levying  
26 a special assessment on its members for  
27 this purpose or by application of any  
28 unencumbered funds available but which  
29 have not been raised by imposition of  
30 any preassessment or post-assessment.  
31 The association may obtain from each  
32 member any information it may reason-  
33 ably require in order to facilitate the  
34 securing of this primary excess insur-  
35 ance. The association shall establish  
36 reasonable safeguards designed to en-  
37 sure that information so received is  
38 used only for this purpose and is not  
39 otherwise disclosed;

40 (4) Be obligated to the extent of covered

COMMITTEE AMENDMENT "A" to H.P. 215, L.D. 249

1 claims occurring prior to the determination  
2 of the self-insurer's insolvency, or occur-  
3 ring after such determination but prior to  
4 the obtaining of workers' compensation in-  
5 surance as otherwise required under this Ti-  
6 tle by the self-insurer. Nothing in this  
7 section shall obligate the association to  
8 pay claims against a self-insurer which are  
9 not or have not been paid as a result of a  
10 determination of insolvency or the institu-  
11 tion of bankruptcy or receivership proceed-  
12 ings which occurred prior to the effective  
13 date of this section.

14 (a) "Covered claim" means an unpaid  
15 claim against an insolvent self-insurer  
16 which relates to an injury which occurs  
17 while the self-insurer is a member of  
18 the association and which is compensa-  
19 ble under this Act;

20 (5) After paying any claim resulting from a  
21 self-insurer's insolvency, the association  
22 shall be subrogated to the rights of the in-  
23 jured employee and dependents and shall be  
24 entitled to enforce liability against the  
25 self-insurer by any appropriate action  
26 brought in its own name or in the name of  
27 the injured employee and dependents;

28 (6) Assess the fund in an amount necessary  
29 to pay:

30 (a) The obligations ~~to~~ for the associ-  
31 ation under this section subsequent to  
32 an insolvency;

33 (b) The expenses of handling covered  
34 claims subsequent to an insolvency;

35 (c) The costs of examinations under  
36 subsection 8; and

COMMITTEE AMENDMENT "A" to H.P. 215, L.D. 249

- 1 (d) Other expenses authorized by this  
2 subchapter;
- 3 (7) Investigate claims brought against the  
4 association and adjust, compromise, settle  
5 and pay covered claims to the extent of the  
6 association's obligation and deny all other  
7 claims. The association may review settle-  
8 ments to which the insolvent self-insurer  
9 was a party to determine the extent to which  
10 such settlements may be properly contested;
- 11 (8) Notify such persons as the superintend-  
12 ent directs under subsection 7;
- 13 (9) Handle claims through its employees or  
14 through one or more self-insurers or other  
15 persons designated as servicing facilities.  
16 Designation of a servicing facility is sub-  
17 ject to the approval of the superintendent,  
18 but designation of a member self-insurer as  
19 a servicing facility may be declined by such  
20 self-insurer;
- 21 (10) Reimburse each servicing facility for  
22 obligations of the association paid by the  
23 facility and for expenses incurred by the  
24 facility while handling claims on behalf of  
25 the association; and
- 26 (11) Pay the other expenses of the associa-  
27 tion authorized by this section.
- 28 (a) Establish in the plan of operation  
29 a mechanism to calculate the assess-  
30 ments required by subparagraphs (1),  
31 (2) and (3) by a simple and equitable  
32 means to convert from policy or fund  
33 years which are different from a calen-  
34 dar year.





COMMITTEE AMENDMENT "A" to H.P. 215, L.D. 249

1 effected by this amendment is the requirement that  
2 primary excess contracts issued to self-insurers,  
3 both individual and groups, name the Maine Self-  
4 Insurance Guarantee Association as a coinsured, so  
5 that the association may make recoveries under these  
6 excess contracts for the benefit of workers' compen-  
7 sation claimants in the event of a self-insurer's in-  
8 solvency.

9 The remainder of the amendment would change the  
10 statute under which the Maine Self-Insurance Guarant-  
11 tee Association operates to provide: That its obli-  
12 gation to assist in the detection of self-insurer  
13 insolvencies applies only upon the request of the in-  
14 surance superintendent; that the Maine Self-Insurance  
15 Guarantee Association has immunity for omissions, as  
16 well as acts, with the limitation that this immunity  
17 does not extend to willful neglect or malfeasance  
18 which would otherwise be actionable; and that the ex-  
19 isting provisions for a 60-day stay of proceedings  
20 against the Maine Self-Insurance Guarantee Associa-  
21 tion, which applies upon its succeeding to the re-  
22 sponsibilities of an insolvent self-insured employer  
23 to make benefit payments, be extended to cover the  
24 running of time periods prescribed under the early  
25 pay provisions, provided that weekly compensation  
26 payments are being made under the Maine Revised Stat-  
27 utes, Title 39, sections 54 and 55.

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