

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND NINTH LEGISLATURE

Legislative Document

No. 526

H. P. 396

House of Representatives, February 13, 1979

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

EDWIN H. PERT, Clerk

Presented by Mr. Wyman of Pittsfield.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-NINE

AN ACT Relating to Self-insurance under the Workers' Compensation Act.

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

Sec. 1. 39 MRSA § 23, sub-§ 2, as amended by PL 1973, c. 746, § 6, is further amended to read:

2. By furnishing satisfactory proof to the ~~commission~~ **Superintendent of Insurance** of his solvency and financial ability to to pay the compensation and benefits, and deposit cash, satisfactory securities or a security bond, **with the Workers' Compensation Commission**, in such sum as the ~~commission superintendent~~ may determine; such bond to run to the Treasurer of State and his successor in office, and to be conditional upon the faithful performance of this Act relating to the payment of compensation and benefits to any injured employee. In case of cash being deposited, it shall be placed at interest by the Treasurer of State, and the accumulation of interest on said cash or securities so deposited shall be paid to the employer depositing the same. The ~~commission superintendent~~ may at any time in its discretion deny to an employer the right to continue in the exercise of the option granted by this section.

Sec. 2. 39 MRSA § 23, sub-§ 2-A, as last amended by PL 1977, c. 696, § 400, is further amended to read:

2-A. Subsection 2, which applies to individual self-insurer, shall be equally

applicable in all respects to group self-insurers. ~~Group self insurers shall be those individuals or corporations associated together having similar business objectives, similar types of employment or employees engaged in the same type of work. Such group~~ **Any employer or group of employers** desiring to become a self-insurer shall submit to the ~~Chairman of the Workers' Compensation Commission~~ **Superintendent of Insurance** with an application for self-insurance, in a form prescribed by the ~~chairman superintendent~~ the following:

- A. A payroll report for each participating employer of the group for 3 preceding annual fiscal periods;
- B. A report of compensation losses incurred, payments plus reserves, by each participating employer of the group for the corresponding 3 annual periods;
- C. A sworn itemized statement of the group's assets and liabilities; satisfactory proof of financial ability to pay compensation for the employers participating in the group plan; the group's reserves, their source and assurance of continuance;
- D. A description of the safety organization maintained by the employer or group for the prevention of injuries;
- E. A statement showing the kind of operations performed or to be performed; and
- F. Any and all agreements, contracts or other pertinent documents relating to the organization of the employers in the group.

If, upon examination of the sworn financial statement and other data submitted, the ~~chairman superintendent~~ is satisfied as to the ability of the employer or group to make current compensation payments and that the employer's or group's tangible assets make reasonably certain the payment of all obligations that may arise under the Workers' Compensation Law, the application shall be granted subject to the terms and conditions setting out the exposure of cash deposits or securities or an acceptable surety bond, all as required by the ~~Chairman of the Workers' Compensation Commission~~ **superintendent**. Security against shock or catastrophe loss shall be provided either by depositing securities **with the Workers' Compensation Commission** in such amount as the ~~chairman superintendent~~ may determine, or by filing with the ~~chairman superintendent and the Workers' Compensation Commission~~ an insurance carrier's certificate of a standard self-insurer's excess contract issued to the self-insurer or group in form approved by the ~~chairman superintendent~~, providing reinsurance coverage against losses arising out of one injury in such amounts as the ~~chairman superintendent~~ may determine, or a combination of the foregoing, satisfactory to the ~~chairman superintendent~~.

Yearly reports in a form prescribed by the ~~chairman superintendent~~ shall be filed by each self-insurer or group. Said reports shall be filed within 30 days after the ~~chairman's superintendent's~~ request, or at such time as the ~~chairman superintendent~~ shall otherwise set.

After approving any application for self-insurance, the superintendent shall promptly notify the Workers' Compensation Commission and forward to it copies of the application and all supporting materials.

Sec. 3. 39 MRSA § 23, sub-§ 4, ¶ A, as enacted by PL 1973, c. 559, § 3, is repealed.

Sec. 4. 39 MRSA § 23, sub-§ 4, ¶ B, as enacted by PL 1973, c. 559, § 3, is amended to read:

B. Any group ~~consisting exclusively of such~~ employers may adopt a plan for self-insurance, as a group, for the payment of compensation under this chapter to their employees. Under such plan the group shall assume the liability of all the employers within the group and pay all compensation for which the said employers are liable under this chapter. Where such plan is adopted the group shall furnish satisfactory proof to the ~~chairman~~ **superintendent** of its financial ability to pay such compensation for the employers in the ~~industry covered by it~~ **group**, its revenues, their source and assurance of continuance. The ~~chairman~~ **superintendent** shall require the deposit with the ~~chairman~~ **Workers' Compensation Commission** of such securities as may be deemed necessary of the kind prescribed in paragraphs A to E or the filing of a bond of a surety company authorized to transact business in this State, in an amount to be determined to secure its liability to pay the compensation of each employer as above provided in accordance with paragraph E. Such surety bond must be approved as to form by the ~~chairman~~ **superintendent**. The ~~chairman~~ **superintendent** may also require that any and all agreements, contracts and other pertinent documents relating to the organization of the employers in the group shall be filed with him at the time the application for group self-insurance is made. Such application shall be on a form prescribed by the ~~chairman~~ **superintendent**. The ~~chairman~~ **superintendent** shall have the authority to deny the application of the group to pay such compensation or to revoke his consent furnished under this section at any time for good cause shown. The group qualifying under this paragraph shall be known as a self-insurer.

Sec. 5. 39 MRSA § 23, sub-§ 4, ¶ C, as enacted by PL 1973, c. 559, § 3, is further amended to read:

C. An employer participating in group self-insurance shall not be relieved from the liability for compensation prescribed by this chapter except by the payment thereof by the group self-insurer or by himself. As between the employee and the group self-insurer, notice to or knowledge of the occurrence of the injury on the part of the employer shall be deemed notice of knowledge, as the case may be, on the part of the group self-insurer; jurisdiction of the employer shall, for the purpose of this chapter, be jurisdiction of the group self-insurer and such group self-insurer shall in all things be bound by and subject to the orders, findings, decisions or awards rendered against the participating employer for the payment of compensation under this chapter. The insolvency or bankruptcy of a participating employer shall not relieve the group self-

insurer from the payment of compensation for injuries or death sustained by an employee during the time the employer was a participant in such group self-insurance. The group self-insurer shall promptly notify the ~~chairman~~ **superintendent and the Workers' Compensation Commission**, on a prescribed form, of the addition of any participating employer or employers. Notice of termination of a participating employer shall not be effective until at least 10 days after notice of such termination, on a prescribed form, has been either filed in the office of the ~~chairman~~ **superintendent and the Workers' Compensation Commission** or sent by registered mail, and also served in like manner upon the ~~employer~~ **other participating employers**.

Sec. 6. **39 MRSA § 23, sub-§ 4, ¶ D**, as amended by PL 1977, c. 696, § 401, is further amended to read:

D. Each group self-insurer, in its application for self-insurance, shall set forth the names and addresses of each of its officers, directors, trustees and general manager. Notice of any change in the officers, directors, trustees or general manager shall be given to the ~~chairman~~ **superintendent and the Workers' Compensation Commission** within 10 days thereof. No officer, director, trustee or employee of the group self-insurer may represent or participate directly or indirectly on behalf of an injured worker or his dependents in any workers' compensation proceeding. All employees of employers participating in group self-insurance shall be and are deemed to be included under the group self-insurance plan.

Sec. 7. **39 MRSA § 23, sub-§ 4, ¶ E**, as amended by PL 1973, c. 559, § 3, is further amended to read:

E. If for any reason, the status of a group self-insurer under this paragraph is terminated, the securities or the surety bond on deposit referred to herein shall remain in the custody of the ~~chairman~~ **Workers' Compensation Commission** for a period of at least 26 months. At the expiration of such time or such further period as the ~~chairman~~ **superintendent** may deem proper and warranted, he may accept in lieu thereof, and for the additional purpose of securing such further and future contingent liability as may arise from prior injuries to workers and be incurred by reason of any change in the condition of such workers warranting the board making subsequent awards for payment of additional compensation, a policy of insurance furnished by the group self-insurer, its successor or assigns or other carrying on or liquidating such self-insurance group. Such policy shall be in a form approved by the superintendent of insurance and issued by the state fund or any insurance company licensed to issue this class of insurance in this State. It shall only be issued for a single complete premium payment in advance by the group self-insurer. It shall be given in an amount to be determined by the ~~chairman~~ **superintendent** and when issued shall be noncancellable for any cause during the continuance of the liability secured and so covered.

Sec. 8. **39 MRSA § 23, sub-§ 4, ¶ F**, as enacted by PL 1973, c. 559, § 3, is repealed and the following enacted in its place:

F. The Superintendent of Insurance may provide for the administration of this section relating to self-insurance in the manner prescribed in Title 24-A, section 212.

Sec. 9. 39 MRSA § 23, sub-§ 5, as amended by PL 1973, c. 585, § 12, is further amended to read:

5. Self-insurance.

A. "Self-insurance," as used herein, shall be deemed to be the system of securing compensation as provided in subsection 4. ~~For the purposes of subsection 4 concerning group self insurance plans, the amount of deposit of securities or the amount of a bond to be filed pursuant to subsection 4 shall be jointly determined by the chairman and the Insurance Superintendent. The chairman may from time to time request the Insurance Superintendent for such other assistance, and the Insurance Superintendent is hereby authorized to render such assistance upon request of the chairman, as may be necessary to insure the financial ability of such groups to pay compensation for the employers in the industries covered by such plans.~~

STATEMENT OF FACT

The purpose of this bill is to make self-insurance available to any group of employers without any restrictions relating to type of business or employment. The restrictions in the existing law serve no legitimate purpose. The elimination of these restrictions will enable more employers to avail themselves of the advantages of this section. It will present no risk to employees as any group seeking self-insured status will continue to be required to satisfy the State as to its financial ability to provide compensation and will continue to be subject to the bonding requirements of this section.

The bill also transfers the administration of these self-insurance provisions from the commission to the Superintendent of Insurance. Since a determination of whether an employer should be permitted to insure himself depends entirely upon an evaluation of the risks of loss associated with his type of business and his financial ability to meet those potential losses, it is clear that the superintendent is in a better position to make the determination.