

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 975

H. P. 821

House of Representatives, February 24, 1981

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

EDWIN H. PERT, Clerk

Presented by Representative Brannigan of Portland.

Cosponsors: Senator C. Sewall of Lincoln, Senator Conley of Cumberland and Representative Higgins of Scarborough.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

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-A, ¶¶ E and F, as enacted by PL 1973, c. 559, § 2, are amended to read:

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; **and**

Sec. 2. 39 MRSA § 23, sub-§ 2-A, ¶ G is enacted to read:

G. Evidence of a commitment by each member of the group to pay to the group fund not less than 25% of its estimated annual standard premium upon approval of the application.

Sec. 3. 39 MRSA § 23, sub-§ 2-A, 2nd ¶ from the end, as amended by PL 1979, c. 577, § 2, is further amended by adding after the first sentence a new sentence to read:

The superintendent may, in addition, require the filing of quarterly financial

status reports whenever he finds that there has been a significant deterioration in the financial condition of either an individual or a group self-insurer.

Sec. 4. 39 MRSA § 23, sub-§ 4, ¶M is enacted to read:

M. The following provisions shall apply to group self-insurance funds.

(1) Employers participating in a group self-insurance fund are subject to the Experience Rating Plan established by the principal rating organization in this State and approved by the superintendent. An experience modification shall be determined for each member of a fund annually, or as otherwise provided, on the same basis as if the employer were insured, and this modification shall be used to determine the employer's standard premium as provided by regulation of the superintendent.

(2) Any approved group self-insurer with 3 or more years of fund experience which shows that the classification and rating system under the experience rating plan established by the principal rating organization in this State is inappropriate for proper experience modification for its group, may apply to the superintendent for approval of another experience rating modification system if this system is shown to be appropriate.

(3) Any approved group self-insurer with 3 or more years of fund experience may apply to the bureau for permission to deviate from the manual rates promulgated by the principal rating organization in this State. A request for permission to deviate shall be filed with the bureau not less than 30 days before the beginning of the fund year for which the deviation is sought. The request shall be accompanied by sufficient evidence, including a certification by a qualified actuary, that the proposed rate for each payroll classification is adequate to cover expected losses for that payroll classification.

(4) The trustees of a group self-insurer may allow advance premium discounts to any member provided they are found to be actuarially sound by the superintendent.

(5) Any surplus moneys for a fund year in excess of the amount necessary to fulfill all obligations under the Act for that fund year, including a provision for claims incurred but not reported, may, subject to approval by the superintendent, be declared to be refundable by the trustees at any time, and the amount of the declaration shall become a fixed liability of the fund at the time of the declaration. The date of the payment shall be as agreed by the trustees and the bureau, but in no event earlier than 12 months after the end of the fund year. Surplus moneys not allocated to pay claims and not needed to satisfy the loss fund requirements may be funded immediately after the end of the fund year upon approval of the superintendent.

(6) In order to ensure the financial stability of a group self-insurance fund, the trustees may, in their discretion, apply a penalty rate to produce premium in excess of standard premium to any employer or class of

employers with unfavorable loss experience. Any such penalty rate shall be subject to prior review and approval by the superintendent.

Sec. 5. 39 MRSA § 23, sub-§ 5, as last amended by PL 1979, c. 577, § 9, is repealed.

Sec. 6. 39 MRSA § 23, sub-§§ 6-11 are enacted to read:

6. Security deposit and excess insurance requirements for individual self-insurers. The following security deposit and excess insurance requirements apply to individual self-insurers.

A. The bond or security deposit required of an individual self-insurer with a net worth in excess of \$25,000,000 shall be \$50,000. The security deposit required of all other individual self-insurers shall, subject to a minimum of \$50,000, be an amount determined by the following formula: Sixty percent of current annual standard premium plus outstanding workers' compensation liabilities minus recoveries from all excess carriers and subrogations. If the employer has submitted a certified audit in fulfillment of its financial reporting requirements, the deposit required shall be reduced by the employer's net current assets. If the employer retains an aggregate excess policy, the retention, if less, shall be substituted for the 60% of current standard premium in the formula.

B. Except as provided in this paragraph, all individual self-insurers shall maintain specific excess insurance unless the superintendent, in his discretion, waives such a requirement. Specific excess insurance shall generally have a limit of at least \$2,000,000. Higher limits may be required for those businesses with a high risk of multiple injury from a single occurrence. The retention underlying specific excess policies shall be the lowest retention generally available for businesses of similar size and exposure, but may, at the superintendent's discretion, be established at higher levels consistent with the employer's claims experience and financial condition.

All individual self-insurers with a net worth of less than \$25,000,000 shall maintain aggregate excess insurance unless the superintendent, in his discretion, waives the requirement. The amount of excess insurance shall be subject to individual determination by the superintendent at the time of application. No aggregate excess insurance may be required of individual self-insurers with a net worth in excess of \$25,000,000.

No specific or aggregate excess insurance may be required of the State of Maine, the University of Maine, counties, cities, towns, water districts, community school districts, School Administrative Districts and all other quasi-municipal corporations and school administrative units of a similar nature, provided they have a net worth in excess of \$25,000,000.

7. Security deposit and excess insurance requirements for group self-insurers. The following security deposit and excess insurance requirements apply to group self-insurers.

A. The security deposit or bond required of a group self-insurer shall be equal to that portion of the net safety factors for all open fund years which is unfunded plus any contingent liabilities, provided there is a minimum security deposit or bond of \$50,000. The amount of the security deposit or bond shall be determined at least annually, based on data submitted by the group self-insurer to the bureau. All moneys posted by the fund as a security deposit shall be transferred from surplus. For the purpose of this paragraph, a contingent liability means an unfunded amount that a group may be obligated to pay in excess of a given fund year's total loss fund. The amount of any contingent liability shall be reduced to the extent it is funded by excess insurance or other funding acceptable to the superintendent.

B. Each group shall maintain specific excess insurance with a limit of at least \$2,000,000. Group self-insurers with a high risk of multiple injury from a single occurrence may be required by the superintendent to maintain higher limits. The retention underlying specific excess coverage shall be the lowest retention generally available for self-insurers' funds with similar exposure and annual premium, but may, at the superintendent's discretion, be established at higher levels consistent with the employers' claims experience and financial condition.

Each group shall maintain aggregate excess insurance unless a security deposit acceptable to the superintendent is posted or unless unencumbered surplus in an amount acceptable to the superintendent is held by the fund. The aggregate excess limit and aggregate retention for a group shall be determined by the superintendent.

8. Acceptable deposit funds or surety bond. In addition to cash, the deposit funds acceptable to the superintendent as a security deposit include, but are not limited to, United States Government bonds, notes or bills; revenue bonds of states or political subdivisions of the United States which are guaranteed and rated in the 3 highest grades by a national rating agency, such as Moodys, Standard & Poors, Fitch; certificates of deposit issued by a duly chartered commercial bank or thrift institution in the State which are protected by the Federal Deposit Insurance Corporation; savings certificates issued by any savings and loan association in the State which are protected by the Federal Savings and Loan Insurance Corporation; and surety bonds in a form prescribed by the superintendent which are issued by any corporate surety which meets the qualifications prescribed by regulation of the superintendent.

9. Qualifications for excess carriers. No workers' compensation contract or policy issued after the effective date of this section may be recognized by the superintendent in considering the ability of an individual or group self-insurer to fulfill its financial obligations under the Act unless the contract or policy is issued by an admitted or an approved nonadmitted insurance company or by an alien or domestic unincorporated insurer which meets the minimum admission qualifications prescribed in Title 24-A.

10. Grounds for revocation. The following may constitute grounds for revocation of the right to continue the option to self-insure:

- A. Substantial failure to comply with this section and any applicable regulations prescribed by the superintendent;**
- B. Substantial failure to comply with any lawful order of the superintendent;**
- C. Willful noncompliance with the Workers' Compensation Act;**
- D. Committing an unfair or deceptive act or practice as defined in Title 24-A, sections 2151 to 2167;**
- E. Deterioration of financial condition adversely affecting the self-insurers' ability to pay expected losses; or**
- F. Failure to pay any lawful assessment of the Maine Insurance Guarantee Association.**

11. Confidentiality of certain information. All financial information and all information relating to individual compensation cases which is required, by statute or regulation, to be filed with or made available to the superintendent, by either individual or group self-insurers, shall be confidential and may be used by the superintendent only for the purpose of administering this section.

STATEMENT OF FACT

The purpose of this bill is to provide the Bureau of Insurance with specific statutory standards for regulating employers or groups of employers who elect to self-insure under the Workers' Compensation Act.