

MAINE STATE LEGISLATURE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES (Filing No. H-562)
110TH LEGISLATURE
FIRST REGULAR SESSION

HOUSE AMENDMENT "A" to H.P. 834, L. D. 1001, Bill, "AN ACT Establishing the Bonding and Excess Insurance Requirements for Self-insuring Workers' Compensation Employers."

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

'Sec. 1. 24-A MRSA §4435, sub-§8, as enacted by PL 1979, c. 658, §4, is amended to read:

8. Insurer. "Insurer" means any insurer as defined in Title-24-A, section 47, and any group self-insurer as defined by Title-39, section 23.

Sec. 2. 39 MRSA §23, sub-§2, as last amended by PL 1979, c. 577, §1, is further amended by adding at the end a new paragraph to read:

Notwithstanding any provision of this section or chapter, any bond or security deposit required of a public employer which is a self-insurer shall not exceed \$50,000, provided that such public employer has a net worth equal to or in excess of \$25,000,000 and a state-assessed valuation equal to or in excess of \$300,000,000. "Public employer" includes the State, the University of Maine, counties, cities and towns.

Sec. 3. 39 MRSA §23, sub-§2-A, first ¶, first sentence, as amended by PL 1979, c. 577, §2, is further amended to read: Subsection Except for the provision relating to individual public employer self-insurers, subsection 27 which applies to individual self-insurer, shall be equally applicable in all respects to group self-insurers.

Sec. 4. 39 MRSA → §23, sub-§2-A, 2nd ¶ → from the end, as amended by P L 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 has reason to believe that there has been a deterioration in the financial condition of either an individual or group self-insurer which adversely affects the individual's or group's ability to pay expected losses.

Sec. 5. 39 MRSA §23, sub-§2-A, as last amended by PL 1979 c. 577, §2, is further amended by adding at the end of the 2nd paragraph a new sentence to read:

Notwithstanding any provision of this section or chapter, no specific or aggregate excess insurance shall be required of any individual public employer who is self-insured and has a net worth equal to or in excess of \$25,000,000 and a state-assessed valuation equal to or in excess of \$300,000,000.

Sec. 6. 39 MRSA §23, sub-§4, ¶I, as enacted by PL 1979, c. 658, §5, is repealed.

Sec. 7. 39 MRSA → §23, sub-§§6-10 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 shall not be less than the greater of an amount determined by the following formula or \$50,000. The bond or security deposit shall be the greater of an amount equal to the loss and loss adjustment expense portion of the annual standard premium for the prospective fiscal coverage period or outstanding loss reserves minus recoveries from all excess carriers and subrogation reduced to net collections plus 25% of annual standard premiums for the prospective fiscal coverage period. The percentage factor used to determine the portion of standard annual premium allocated for loss and loss adjustment expenses shall be acceptable to the superintendent.

For individual self-insurers who have a net worth equal to or in excess of \$10,000,000; who have had positive net earnings demonstrated by certified statements of financial condition in at least (three) of the (five) latest fiscal years, including therein one of the (two) most recent years; and whose mean annual earnings for the (five) latest fiscal years are at least equal to the normal annual premium for the prospective fiscal coverage period, the minimum security deposit or bond shall be an amount determined by the formula above or as hereinafter adjusted for applicable levels of working capital funds.

An employer meeting the above test may deduct from the penal value of its surety bond or from market value of securities deposited, an amount not exceeding demonstrated working capital in such current statement of financial condition; the bond or deposit shall not be less than \$100,000.

For those self-insurers unable to meet the foregoing standards, the security deposit shall be governed by ~~←—————→~~ this subsection. Self-insurers failing these tests shall deposit acceptable funds or a surety bond in that amount produced by the

formula to be written by a corporate surety which meets the qualifications prescribed by regulations of the superintendent.

Within $\leftarrow \rightarrow$ 30 days after notice by the Superintendent of Insurance, the self-insurer shall post the deposit indicated. This deadline may be extended by the Superintendent for good cause but in no event may exceed one year from the deadline for compliance as stated in the notice given to the self-insurer.

A bond or security deposit in excess of the amount prescribed by this subsection may be required if the Superintendent determine that the self-insurer has experienced a deterioration in financial condition which adversely affects the self-insurer's ability to pay expected losses.

No judgment creditor other than claimants for benefits under this Act may have a right to levy upon the self-insurer's assets held in such deposit.

B. 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 shall maintain aggregate excess

insurance unless the superintendent, in his discretion, waives such requirements.

7. Acceptable deposit funds or surety bonds. In addition to cash, the deposit funds acceptable to the superintendent as a security deposit shall include United States Government bonds, notes or bills, issued or guaranteed by the United States of America; bonds secured by the full faith, credit and taxing power of political subdivisions of the United States rated in the (three) highest grades by a national rating agency such as Moody's, Standard and Poor's, Fitch, as of the foregoing year end; money market funds which are invested only in United States Government or Government agency obligations with a maturity of one year or less; high grade commercial paper rated as either A¹ or P¹ by a national rating agency; 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, and such other investments approved by the superintendent.

8. 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 this Act unless the contract or policy is issued by an admitted insurance company or by an approved alien unincorporated insurer or other subsequently approved insurance exchange possessed of similar capitalization, deposit funds and underwriting capabilities which meets the minimum qualifications prescribed in Title 24-A and regulations appertaining to admission or eligibility requirements.

9. Revocation or Termination of the Self-Insurance Privilege

The following may constitute grounds for denial of the right of any individual or group to continue the option of self-insurance:

- A. Failure to comply with regulations adopted by the superintendent or any provisions of this Act within 14 days or such other time as may be established by order of the superintendent of notice of such failure;
- B. Failure to comply with any lawful order of the superintendent;
- C. Repeated failure to comply with regulations of the superintendent or any provisions of this Act.

- D. Committing an unfair or deceptive act or practice as defined in Title 24-A, sections 2151/2167^{to}.
- E. Deterioration of financial condition adversely affecting the self-insurer's ability to pay expected losses. or
- F. Failure to pay any lawful assessment of the Maine Self-insurance Guarantee Association.

Notwithstanding \longleftrightarrow Title 5, section \rightarrow 10051, the
superintendent is expressly granted the authority to revoke or
suspend the right of an individual or group to continue the
option to self-insure after a hearing held in accordance with
 \leftarrow Title 5, \rightarrow chapter 375, subchapter IV and
Title 24-A, chapter 3.

10. Confidentiality of certain information. All financial
information, all information contained in the minutes of trustee
meetings and all information relating to individual compensation
cases, except information required in Section 23-A, subsection 4, para-
graph A, subparagraph (1),
which a self-insurer is required to file with or make available
to the superintendent under this section, Section 23-A or
regulations adopted thereunder shall be confidential. The
confidential nature of any such information shall not limit
or affect the use of the same by the superintendent in admini-
stering this Act.

Sec. 3. 39 M R S.A §23-A is enacted to read:

§23-A. Maine Self-~~insurance~~ Guarantee Association
Created.

1. There is created a ^{Maine} Self-~~insurance~~ Guarantee Association
to provide mechanisms for the payment of covered claims
under self-insurance coverage, to avoid excessive delay in
payment, to avoid financial loss to claimants because of
the insolvency of a self-insurer and to assist in the detection
and prevention of self-insurer insolvencies.

Created; legal entity.

2. There is created a non profit unincorporated legal
entity to be known as the Maine Self-~~insurance~~ Guarantee
Association. All self-insurers, as defined in ^{this} Title,
shall be and remain members of the Association as a condition
of authority to self-insure in this State, except that all
public employers which are individual self-insurers, with a
net worth equal to or in excess of \$25,000,000 and in the case
of counties, cities and towns, a state-assessed valuation equal
to or in excess of \$300,000,000 shall not be subject to
← this subsection. The Association shall perform
its functions under a plan of operation established → or
amended ^{, or both,} and approved by the superintendent and shall exercise
its powers through the board of directors established in this
section.

A. A self-insurer shall be deemed to be a member
← of the Association for purposes of another self-
← insurer's insolvency, as defined in subsection ⁶ when:

(1)
the self-insurer is a member of the
association when an insolvency occurs, or
(2)
the self-insurer has been a member of the
association at some point in time during the
12-month period immediately preceding the
insolvency in question.

B. A self-insurer shall be deemed to be a member of
the association for purposes of its own insolvency
when:

(1)
the self-insurer is a member of the association
when the insolvency occurs, but claims relating
to a compensable event which occurred prior to
the date the self-insurer joined the association
are not included hereunder; or
(2)
the self-insurer becomes insolvent after
leaving the association, but claims relating
to a compensable event which occurred prior
to the date the self-insurer joined the
association are not included hereunder, and
claims relating to a compensable event which
occurred after the self-insurer ceased to be
an approved self-insurer are not to be
afforded coverage hereunder.

3. Board of Directors. The board of directors of the
Association shall consist of not less than → 7 persons

serving terms as established in the plan of operation. The members of the Board shall be selected by the member self-insurers, subject to the approval of the Superintendent of Insurance. Vacancies on the board shall be filled for the remaining period of the term in the same manner as initial appointments. If no members of the Board are selected by December 1, 1931, the Superintendent may appoint the initial members of the board of directors.

In approving selections to the board, the Superintendent shall consider among other things whether all member self-insurers are fairly represented.

Members of the board may be reimbursed from the assets of the Association for expenses incurred by them as members of the board of directors.

4. Powers and Duties of the Association. The powers and duties of the association are as follows.

A. The association shall:

(1) Obtain from each member and file with the Superintendent individual reports specifying the aggregate benefits each member paid during the previous calendar year, and the annual standard premium which would have been paid by each self-insurer during the previous calendar year pursuant to manual rates established by the principal rating organization in the State and

using the experience rating procedure approved
by the Superintendent of Insurance for that self-
insurer. These reports shall be due on or before
February 15th following the close of that calendar
year.

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

(a) Each individual self-insurer shall be annually
assessed an amount equal to 1% of the annual
standard premium which would have been paid by
that individual self-insurer during the prior
calendar year; payment to the association
shall be made no later than April 15th
following the close of that calendar year.
Regardless of the size of the fund referred
to in subparagraph (3) during its first (twelve)
months of membership no individual self-insurer may
discount or reduce this 1% assessment.

(b) Each group self-insurer shall be annually
assessed an amount equal to .1% of the total
annual standard premium which would have been
paid by all the members of that group self-insurer
during the prior calendar year; payment to
the association shall be no later than
April 15th following the close of that
calendar year. Regardless of the size of the
fund referred to in subparagraph (3) during its

first (twelve) months of membership no group self-insurer may discount or reduce this .1% assessment.

(c)

/Each member self-insurer shall be notified of the assessment no later than \rightarrow 30 days before it is due;

(d)

/If a self-insurer is a member of the association for less than a full calendar year, the annual standard premium shall be adjusted by that portion of the year the self-insurer is not a member of the association; and

(e)

/If application of the contribution rates referred to in divisions (a) and (b) \rightarrow would produce an amount in excess of the limits of the fund established in subparagraph (3) an equitable proration shall be made.

(3)

Administer a fund, to be known as the Maine Self-Insurance Guarantee Fund, which shall receive the assessments required in subparagraph (1). This fund shall not exceed \$1,000,000, except that once the fund reaches \$1,000,000, the fund shall not exceed \$1,000,000 plus all subsequent initial assessments of new member self-insurer^s which are required to be made in subparagraph (2) divisions ^(a) /and (k

← The costs of administration by the association shall be borne by the Fund, and the association is authorized to secure reinsurance and bonds and to otherwise invest the assets of the Fund to effectuate the purpose of the association, subject to the approval of the Superintendent of Insurance.

(4) ~~Be~~ obligated to the extent of covered claims occurring prior to the determination of the self-insurer's insolvency, or occurring after such determination but prior to the obtaining of workers' compensation insurance as otherwise required under ^{this} Title → by the self-insurer.
Nothing in this section shall obligate the association to pay claims against a self-insurer which are not or have not been paid as a result of a determination of insolvency or the institution of bankruptcy or receivership proceedings which occurred prior to the effective date of this section.

(a) "Covered Claim" means an unpaid claim against an insolvent self-insurer which relates to an injury which occurs while the self-insurer is a member of the association and which is compensable under this Act.

(5)

/ After paying any claim resulting from a self-insurer's insolvency, the association shall be subrogated to the rights of the injured employee and dependents and shall be entitled to enforce liability against the self-insurer by any appropriate action brought in its own name or in the name of the injured employee and dependents.

(6)

/ Assess the fund in an amount necessary to pay:

(a)

/ The obligations of the Association under this section subsequent to an insolvency.

(b)

/ The expenses of handling covered claims subsequent to an insolvency.

(c)

/ The costs of examinations under subsection 8; and

(d)

/ Other expenses authorized by this subchapter.

(7)

/ Investigate claims brought against the Association and adjust, compromise, settle and pay covered claims to the extent of the association's obligation and deny all other claims. The association may review settlements to which the insolvent self-insurer was a party to determine the extent to which such settlements may be properly contested;

(8)

/ Notify such persons as the superintendent directs under subsection 7;

(9)

/ Handle claims through its employees or through one or more self-insurers or other persons designated as servicing facilities. Designation

of a servicing facility is subject to the approval of the superintendent, but designation of a member self-insurer as a servicing facility may be declined by such self-insurer;

(10)

Reimburse each servicing facility for obligations of the association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the association; and

(11)

Pay the other expenses of the association authorized by this section.

(a)

Establish in the plan of operation a mechanism to calculate the assessments required by subparagraphs (1), (2) and (3) —> by a simple and equitable means to convert from policy or fund years which are different from a calendar year.

B. The association may:

(1)

Employ or retain such persons as are necessary to handle claims and perform other duties of the association;

(2)

Borrow funds necessary to effect the purposes of this subchapter in accord with the plan of operation;

(3)

Sue or be sued;

(4)

Negotiate and become a party to such contracts as are necessary to carry out the purpose of this section; and

(5)
Perform such other acts as are necessary or proper to effectuate the purpose of this section.

C. The following pertains to post-insolvency assessment.

(1)
In the event the assets of the Fund are not sufficient to pay the obligations of the association, then the association shall make an additional assessment as follows.

(a)
Each individual self-insurer shall be assessed an amount not in excess of 2% each year of the annual standard premium which would have been paid by that individual self-insurer during the prior calendar year. The assessments of each member individual self-insurer shall be in the proportion that the annual standard premium of the individual self-insurer for the premium calendar year bears to the annual standard premium of all member self-insurers for the preceding calendar year.

(b)
Each group self-insurer shall be assessed an amount not in excess of .2% each year of the total annual standard premium which would have been paid by all the members of that group self-insurer during the prior calendar year. The assessments of each member group self-insurer shall be in the proportion that the annual standard premium of the group

self-insurer for the premium calendar year bears to the annual standard premium of all member self-insurers for the preceding calendar year.

(2) Each member self-insurer shall be notified of the assessment no later than \longrightarrow 30 days before it is due.

(3) \longleftarrow The association may exempt or defer, in whole or in part, the assessment of any member self-insurer, if the assessment would cause that member's financial statement to reflect liabilities in excess of assets.

(4) \longleftarrow Delinquent assessments, except as provided in \longrightarrow subparagraph (3) shall bear interest at the rate to be established by the Board, but not to exceed the discount rate of the Federal Reserve Bank, Boston, ^{Massachusetts,} on the due date of the assessment, plus 4% annually, computed from the due date of the assessment.

(5) The association shall Establish in the plan of operations a mechanism to calculate the assessments required by subparagraph (1) \longleftarrow by a simple and equitable means to convert from policy or fund years which are different from a calendar year.

D. \longleftarrow No individual self-insurer may be assessed in any calendar year an amount greater than 2.5% of

the annual standard premium which would have been paid by that self-insurer during the prior calendar year. No group self-insurer may be assessed in any calendar year an amount greater than .25% of the total annual standard premium which would have been paid by all the members of that group self-insurer during the prior calendar year. If the maximum assessment does not provide in any one year an amount sufficient to make all necessary payments, the funds available shall be prorated and the unpaid portion shall be paid as soon thereafter as funds become available.

opposed → There shall be established in the plan of operations a mechanism to calculate the assessments required by this section by a simple and equitable means to convert from policy or fund years which are different from a calendar year.

5. Plan of operation. The plan of operation is as follows.

↓

A. The association shall submit to the superintendent a plan of operation and any amendments thereto necessary or suitable to assure the fair, reasonable and equitable administration of the association. The plan of operation and any amendments thereto shall become effective upon approval in writing by the superintendent.

opposed → If the association fails to submit a suitable plan of operation by January 1, 1982, or if

at any time thereafter the association fails to submit suitable amendments to the plan, the superintendent shall, after notice and hearing, adopt and promulgate such reasonable rules as are necessary or advisable to effectuate this section. Such rules shall continue in force until modified by the superintendent or superseded by a plan submitted by the association and approved by the superintendent.

B. ← All member self-insurers shall comply with the plan of operation.

C. ← The plan of operation shall:

- (1) / Establish the procedures whereby all the powers and duties of the association under subsection 4 will be performed;
- (2) / Establish procedures for handling assets of the association;
- (3) / Adopt a reasonable mechanism and procedure to achieve equity in assessing the funds required in subsection 4, paragraph A, subparagraphs (1), (2) and (3), ~~subsection 4, paragraph C, subparagraph (1) and subsection 4, paragraph D.~~ Consideration shall be given to adjustments for audited payroll, differential effects caused by rate changes, and other relevant factors.
- (4) / Establish the amount and method of reimbursing members of the board of directors under subsection 3.

- (5)
/ Establish procedures by which claims may be filed with the association and establish acceptable forms of proof of covered claims. A list of such claims shall be periodically submitted to the association;
- (6)
/ Establish regular places and times for meetings of the board of directors;
- (7)
/ Establish procedures for records to be kept of all financial transactions of the association, its agents and the board of directors;
- (8)
/ Provide that any member self-insurer aggrieved by any final action or decision of the association may appeal to the superintendent within 30 days after the action or decision;
- (9)
/ Establish the procedures whereby selections for the board of directors shall be submitted to the superintendent; and
- (10)
/ Contain additional provisions necessary or proper for the execution of the powers and duties of the association.

6. Insolvency. A self-insurer shall be insolvent for the purposes of this section under the following circumstances:

- A. Determination of insolvency by a court of competent jurisdiction; and
- B. Institution of bankruptcy proceedings by or regarding the member self-insurer.

7. ~~←~~ Powers and Duties of the Superintendent. The powers and duties of the superintendent are as follows.

A. The superintendent shall:

(1)
Notify the association of the existence of an insolvent member self-insurer not later than 30 days after he receives notice of an insolvency pursuant to the standards set forth in subsection 6.

B. ~~←~~ The superintendent may:

(1)
Require that the association notify the insureds of the insolvent self-insurer and any other interested parties of the insolvency and of their rights under this section. Such notifications shall be by mail at their last known addresses, where available, but if required information for notification is not available, notice by publication in a newspaper of general circulation in this State shall be sufficient; and

space → (2)
Revoke the designation of any servicing facility if he finds claims are being handled unsatisfactorily.

8. Examination of the Association. The association shall be subject to examination and regulation by the superintendent. The board of directors shall submit, not later than March 30th of each year, a financial report for the preceding calendar year in a form approved by the superintendent.

9. Tax Exemption. The association shall be 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.

10. Immunity. There shall be no liability on the part of and no cause of action of any nature shall arise against any member self-insurer, the association or its agents or employees, the board of directors or its individual members, or the superintendent or his representatives for any action taken by them in the performance of their powers and duties under this subchapter.

11. Nonduplication of Recovery. Any person having a covered claim which may be recovered under more than one insurance or self-insurance guarantee association or its equivalent shall seek recovery first from the association of the place of residence of the claimant. Any recovery under this section shall be reduced by the amount of recovery from any other insurance guarantee association or its equivalent.

Stay of proceedings.

12. / All proceedings under this Act to which the insolvent self-insurer is a party either before the Commission or a court in this State, shall be stayed for -----> 60 days from the date of insolvency in order to permit the association to properly prosecute or defend any petition claim or appeal under this Act.

Statement of Fact

This amendment establishes financial responsibility limits for self-insurers and creates the Maine Self-~~Insurance~~ Guarantee Association, which is organized to administer the Maine Self-~~Insurance~~ Guarantee Fund. The purpose of this amendment is to provide a vehicle whereby those entities which self-insure, either individually or in a group, are protected in the event of an insolvency by ensuring that workers' compensation claims are covered. This proposal also protects the interests of the employees who would otherwise lose workers' compensation benefits.

The proposal creates an association with a board of directors empowered to make assessments of every self-insurer in the State. The association is also authorized to administer a pre-assessment fund and to pay valid claims in the event of an insolvency.

The proposal sets forth two protective mechanisms. A pre-assessment insolvency fund calling for a 1% assessment for individual self-insurers and .1% for group self-insurers, based on the prior year's total annual standard premium, is established; those funds to be placed in the Maine Self-~~Insurance~~ Guarantee Fund. The second mechanism is a post-assessment fund, which pledges 2% of each individual self-insurer's and .2% of each group self-insurer's total annual standard premium. The latter mechanism would not be activated unless the fund itself was inadequate to meet the demands of the insolvency.

The program would be overviewed by the Bureau of Insurance and the Fund subject to regular audit and review by the Bureau of Insurance.

The funds would be triggered by a self-insurer insolvency, the insolvency being defined as occurring upon determination by a court of competent jurisdiction of insolvency or institution of bankruptcy proceedings.

The proposal also repeals Title 39, section 23, subsection 4, paragraph 1, and amends 4435, subsection 8, /Title 24-A, section, thereby removing self-insurers from Title 24-A, chapter 57.

This amendment to the ~~Workers' Compensation Law~~ ^{also} establishes the bonding and excess insurance requirements for individual public employers which have a minimum net worth of \$25,000,000 and state valuation of \$300,000,000. These separate requirements for such public employers recognize the ability of the public sector to meet its obligations through the power to tax. "Public employer" is defined in the amendment to include the State, the University of Maine, counties, cities and towns, but this amendment is not intended to preclude a municipality from including employees of a school administrative unit in the municipality's self-insurance program.

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