

# MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

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ONE HUNDRED AND TENTH LEGISLATURE

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**Legislative Document**

**No. 1412**

H. P. 1188

House of Representatives, March 19, 1981

On Motion of Representative Brannigan of Portland, referred to the Committee on Business Legislation. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Representative J. Martin of Eagle Lake.

Cosponsors: Representative Baker of Portland, Representative McHenry of Madawaska.

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STATE OF MAINE

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

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**AN ACT to Reduce the Cost of Workers' Compensation Rates to Maine Employers.**

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

**Sec. 1.** 39 MRSA § 2, sub-§ 1, last sentence, as repealed and replaced by PL 1975, c. 749, § 1, is repealed.

**Sec. 2.** 39 MRSA § 2, sub-§ 5, ¶ B, 2nd sentence, as enacted by PL 1979, c. 64, is amended to read:

Such a person shall elect personal coverage by insuring and keeping insured the payment of compensation and other benefits under ~~a workers' compensation insurance policy~~ the fund.

**Sec. 3.** 39 MRSA § 2, sub-§ 5, ¶ B, 3rd, 4th, 5th and 6th sentences, as enacted by PL 1979, c. 64, are repealed.

**Sec. 4.** 39 MRSA § 2, sub-§ 7, as last amended by PL 1977, c. 696, § 395, is repealed.

**Sec. 5.** 39 MRSA § 2, sub-§ 8, as last amended by PL 1977, c. 696, § 396, is repealed.

**Sec. 6.** 39 MRSA § 21, as last amended by PL 1975, c. 749, § 4, is further amended to read:

**§ 21. Liability of employer**

**1. Private employers.** Every private employer shall be subject to this Act and shall secure the payment of compensation in conformity with ~~sections 21 to 27~~ **this subchapter and chapter 7** 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, except that an employer of 4 or less farm laborers shall be excused from this requirement as to such farm laborers by maintaining coverage by an employer's liability insurance policy as provided in section 4.

Any private employer who has not secured the payment of compensation under ~~sections 21 to 27~~ **this subchapter and chapter 7** 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 arising out of and in the course of his employment, not be entitled to the defenses set forth in section 3 and the employee of any such employer may in lieu of bringing such a civil action claim compensation from such employer under the provisions of this Act.

**\* 2. Governmental bodies.** The State, every county, every city and town shall secure the payment of compensation in conformity with ~~sections 21 to 27~~ **this subchapter and chapter 7**.

**Sec. 7.** 39 MRSA § 22, as repealed and replaced by PL 1979, c. 211, is repealed.

**Sec. 8.** 39 MRSA § 22-A, as amended by PL 1977, c. 696, § 398, is repealed.

**Sec. 9.** 39 MRSA § 23, sub-§ 1, as last amended by PL 1977, c. 696, § 399, is repealed and the following enacted in its place:

**1. Insuring under workers' compensation insurance policy.** By insuring and keeping insured the payment of such compensation and other benefits under an insurance policy with the Workers' Compensation Insurance Fund, in accordance with chapter 7;

**Sec. 10.** 39 MRSA § 24, as last amended by PL 1977, c. 696, § 403, is further amended to read:

**§ 24. Voluntary election**

Any private employer, any of whose employees are exempt, may become subject to this Act 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~~ **this subchapter and chapter 7** shall constitute as to such employer his election to become subject to this Act 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~~ **this subchapter and chapter 7**, provided that, as to any employer who secures compensation by making a contract of workers' compensation insurance, such election shall be deemed to have been made on the effective date of the insurance policy.

**Sec. 11. 39 MRSA § 25, last sentence** is amended to read:

An employer who is authorized to substitute a plan under ~~sections 21 to 27~~ **this subchapter and chapter 7** 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. 12. 29 MRSA § 27**, as amended by PL 1977, c. 696, § 404, is further amended to read:

**§ 27. Preservation of existing employer status**

An employer with a currently approved workers' compensation policy, or a currently accepted self-insurer, within ~~sections 21 to 27~~ **this subchapter and chapter 7** shall be considered in compliance with this Act until the expiration or cancellation date of the current assent based thereon.

**Sec. 13. 39 MRSA § 28, first ¶, first sentence**, as amended by PL 1973, c. 746, § 9, is further amended to read:

An employee of an employer, who shall have secured the payment of compensation as provided in ~~sections 21 to 27~~ **this subchapter and chapter 7** 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.

**Sec. 14. 39 MRSA c. 7** is enacted to read:

## CHAPTER 7

### WORKERS' COMPENSATION

#### INSURANCE FUND

**§ 251. Fund**

There is created and established a fund to be known as the "Workers' Compensation Insurance Fund," to be administered by the Workers' Compensation Insurance Fund Board, 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 the Act for employees and their dependents. It is the intention of the Legislature that, with the exception of allowable self-insurance, the fund shall be the sole provider of insurance for liability for injuries compensable under this Act.

**§ 252. No proprietary interest by State**

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

**§ 253. Rates**

The Workers' Compensation Insurance Fund is 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.

**§ 254. Liability**

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

**§ 255. Contents**

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

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

**§ 256. 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 chapter. 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.

**§ 257. Dividends**

The actual loss experience and expense of the fund shall be ascertained on or before July 1st each year for the calendar year preceding. If it is 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.

**§ 258. 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.

**§ 259. Real estate**

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

**§ 260. Custodian**

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

**§ 261. Deposits**

All moneys which belong to the fund and are collected or received under this chapter 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.

**§ 262. 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 chapter.

**§ 263. 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 may be expended or paid out without first passing into the State Treasury and being drawn therefrom as provided in this chapter.

**§ 264. 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.

**§ 265. 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 decides.

**§ 266. Expenditures**

Expenditures made from the revolving fund in payments made in connection with the insurance business transacted by the fund are exempt 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.

**§ 267. 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.

**§ 268. 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.

**§ 269. 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.

**§ 270. 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.

**§ 271. Reimbursement**

The fund shall annually reimburse the Treasurer of State for services performed as custodian of the moneys of the fund.

**§ 272. Powers of board**

The board may:

1. **Sue.** 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. **Contract.** Enter into any contracts or obligations relating to the fund which are authorized or permitted by law;

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

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

**§ 273. 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.

**§ 274. Board**

The board shall be composed of 5 members appointed by the Governor. 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; and 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.

**§ 275. 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.

**§ 276. 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 hereof or in connection with the insurance policies to be carried on by it under this chapter subject to such regulation as provided.

**§ 277. Rules**

The board may adopt rules relating to the conduct of the business of the fund.

**§ 278. 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.

**§ 279. Compensation**

The members of the board are entitled to receive as compensation \$30 a day 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.



**§ 280. 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.

**§ 281. 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 prescribes.

**§ 282. 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.

**§ 283. 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.

**§ 284. Employees**

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

**§ 285. Powers of executive director**

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

- A. Enter into contracts of workers' compensation insurance and other liability authorized under this Act;
- B. Sell annuities covering compensation benefits;
- C. 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 workers' compensation risk under state law, tendered with premium therefor;
- D. Reinsure any risk or any part thereof;

- E. Cause to be inspected and audited the payrolls of employers applying to the fund for insurance;**
- F. Make rules for the settlement of claims against the fund;**
- G. 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;**
- H. Make safety inspections of risks and furnish advisory services; and**
- I. 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.**

**2. Report.** 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.

**§ 286. Declaration of necessity and public purposes**

It is declared that there exists a need to establish this Workers' 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 the fund is a public purpose and use for which public money may be spent and private property acquired and that the establishment is a function of state concern.

**§ 287. Power to issue revenue bonds**

The Workers' Compensation Insurance Fund Board shall 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.

**§ 288. Credit of State not pledged**

The bonds do not create a pledge of the faith or credit of this State but are totally dependent for repayment upon receipt of premium dollars from employers.

**§ 289. 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 or 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.

**§ 290. Tax exemption**

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

**§ 291. No personal liability**

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

**§ 292. Negotiability of bonds**

**Whether or not the bonds are of such form and character as to be negotiable instruments under the Uniform Commercial Code, Title 11, Article 8, the bonds are hereby made negotiable instruments within the meaning of and for all the purposes of the Uniform Commercial Code, Title 11, Article 8, subject only to the provisions of the bonds for registration.**

**STATEMENT OF FACT**

The purpose of this bill is to provide for workers' compensation insurance through an exclusive state fund, thereby reducing the cost to Maine employers of providing workers' compensation coverage by approximately 30%. The percentage of workers' compensation premiums paid by Maine employers and returned to Maine workers in the form of benefits has traditionally been in the range of 60%, whereas in the 12 American states which provide for workers' compensation coverage through a state fund, the percentage of premiums returned as benefits to injured workers is approximately 90%. An additional advantage of the state fund to the Maine economy would be the retention of both control and investment decisions on this fund in Maine hands, rather than sources outside the State.