

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND ELEVENTH LEGISLATURE
4

5 Legislative Document

No. 559

6
7 H.P. 457

House of Representatives, February 7, 1983

8 Referred to the Committee on Business Legislation, sent up for
9 concurrence and ordered printed.

10 EDWIN H. PERT, Clerk

11 Presented by Representative Brannigan of Portland.

12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-THREE
16

17 AN ACT to Reduce Oversight
18 Responsibilities of the Superintendent of
19 Insurance with Respect to the Maine Self-
20 Insurance Guarantee Association.
21

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

24 Sec. 1. 39 MRSA §23-A, sub-§2, as amended by PL
25 1981, c. 637, §3, is further amended to read:

26 2. Created; legal entity. There is created a
27 nonprofit unincorporated legal entity to be known as
28 the Maine Self-Insurance Guarantee Association. All
29 self-insurers, as defined in this Title, shall be and
30 remain members of the association as a condition of
31 authority to ~~self-insurer~~ self-insure in this State,
32 except that all of public employers which are indi-
33 vidual self-insurers, with a net worth equal to or in
34 excess of \$25,000,000 and in the case of counties,

1 cities and towns, a state-assessed valuation equal to
2 or in excess of \$300,000,000 shall not be subject to
3 this subsection. The association shall perform its
4 functions under a plan of operation ~~established or~~
5 ~~amended, or both, and approved by the superintendent~~
6 and shall adopted by a vote of member self-insurers
7 and shall exercise its powers through the board of
8 directors established in this section.

9 A. A self-insurer shall be deemed to be a member
10 of the association for purposes of another
11 self-insurer's insolvency, as defined in subsec-
12 tion 6, when:

13 (1) The self-insurer is a member of the
14 association when an insolvency occurs, or

15 (2) The self-insurer has been a member of
16 the association at some point in time during
17 the 12-month period immediately ~~preceeding~~
18 preceding the insolvency in question.

19 B. A self-insurer shall be deemed to be a member
20 of the association for purposes of its own insol-
21 vency when:

22 (1) The self-insurer is a member of the
23 association when the insolvency occurs, but
24 claims relating to a compensable event which
25 occurred prior to the date the self-insurer
26 joined the association are not included
27 hereunder; or

28 (2) The self-insurer becomes insolvent
29 after leaving the association, but claims
30 relating to a compensable event which
31 occurred prior to the date the self-insurer
32 joined the association are not included
33 hereunder, and claims relating to a compen-
34 sable event which occurred after the self-
35 insurer ceased to be an approved self-
36 insurer are not to be afforded coverage
37 hereunder.

38 C. In determining the membership of the associa-
39 tion pursuant to paragraphs A and B for any date
40 after January 1, 1983, no employer claiming self-

1 insurer status may be deemed to be a member of
2 the association on any date after January 1,
3 1983, unless that employer is at that time regis-
4 tered as a self-insurer by the superintendent
5 pursuant to section 23, subsection 11.

6 Sec. 2. 39 MRSA §23-A, sub-§3, as amended by PL
7 1981, c. 637, §4, is further amended to read:

8 3. Board of directors. The board of directors of
9 the association shall consist of not less than 7 per-
10 sons serving terms as established in the plan of
11 operation. The members of the board shall be se-
12 lected electd by the member self-insurers, subject
13 to the approval of the Superintendent of Insurance.
14 Vacancies on the board shall be filled for the
15 remaining period of the term in the same manner as
16 initial appointments, except that vacancies may be
17 filled by majority vote of the remaining directors,
18 subject to the approval of the superintendent, until
19 the next annual meeting of the members by the board
20 of directors. If no members of the board are se-
21 lected by December 1, 1981, the superintendent may
22 appoint the initial members of the board of direc-
23 ters.

24 In approving selections to the board, the superinten-
25 dent shall consider among other things whether all
26 member self-insurers are fairly represented.

27 Membership on the board shall fairly represent
28 membership as a whole of the association.

29 Members of the board may be reimbursed from the
30 assets of the association for expenses incurred by
31 them as members of the board of directors.

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
37 the superintendent individual reports speci-
38 fying the aggregate benefits each member
39 paid during the previous calendar year, and

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

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

15 (a) Each individual self-insurer shall
16 be annually assessed an amount equal to
17 1% of the annual standard premium which
18 would have been paid by that individual
19 self-insurer during the prior calendar
20 year; payment to the association shall
21 be made no later than September 15th
22 following the close of that calendar
23 year. Where any such assessment is paid
24 based in whole or in part upon esti-
25 mates of annual standard premium for
26 the prior calendar year, there shall be
27 made in the next year's assessment an
28 adjustment of the assessment of such
29 prior year based on actual audited
30 annual standard premium. Regardless of
31 the size of the fund referred to in
32 subparagraph (3), during its first 12
33 months of membership, no individual
34 self-insurer may discount or reduce
35 this 1% assessment;

36 (b) Each group self-insurer shall be
37 annually assessed an amount equal to
38 .1% of the total annual standard pre-
39 mium which would have been paid by all
40 the members of that group self-insurer
41 during the prior calendar year; payment
42 to the association shall be no later
43 than September 15th following the close
44 of that calendar year. Where any such

1 assessment is paid based in whole or in
2 part upon estimates of annual standard
3 premium for the prior calendar year,
4 there shall be made in the next year's
5 assessment an adjustment of the assess-
6 ment of such prior year based on actual
7 audited annual standard premium.
8 Regardless of the size of the fund
9 referred to in subparagraph (3), during
10 its first 12 months of membership, no
11 group self-insurer may discount or
12 reduce this .1% assessment;

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

16 (d) If a self-insurer is a member of
17 the association for less than a full
18 calendar year, the annual standard pre-
19 mium shall be adjusted by that portion
20 of the year the self-insurer is not a
21 member of the association; and

22 (e) If application of the contribution
23 rates referred to in divisions (a) and
24 (b) would produce an amount in excess
25 of the limits of the fund established
26 in subparagraph (3) an equitable pro-
27 ration shall be made;

28 (3) Administer a fund, to be known as the
29 Maine Self-Insurance Guarantee Fund, which
30 shall receive the assessments required in
31 subparagraph (2). This fund shall not exceed
32 \$1,000,000, except that, once the fund
33 reaches \$1,000,000, the fund shall not
34 exceed \$1,000,000 plus all subsequent ini-
35 tial assessments of new member self-insurers
36 which are required to be made in
37 subparagraph (2), divisions (a) and (b). The
38 costs of administration by the association
39 shall be borne by the fund, and the associa-
40 tion is authorized to secure reinsurance and
41 bonds and to otherwise invest the assets of
42 the fund to effectuate the purpose of the
43 association, subject to the approval of the
44 Superintendent of Insurance.

1 (4) Be obligated to the extent of covered
2 claims occurring prior to the determination
3 of the self-insurer's insolvency, or occur-
4 ring after such determination but prior to
5 the obtaining of workers' compensation
6 insurance as otherwise required under this
7 Title by the self-insurer. Nothing in this
8 section shall obligate the association to
9 pay claims against a self-insurer which are
10 not or have not been paid as a result of a
11 determination of insolvency or the institu-
12 tion of bankruptcy or receivership proceed-
13 ings which occurred prior to the effective
14 ~~date of this section~~ September 18, 1981.

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

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

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

31 (a) The obligations of the association
32 under this section subsequent to an
33 insolvency;

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

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

38 (d) Other expenses authorized by this
39 subchapter;

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

33 **Sec. 4.** 39 MRSA §23-A, sub-§5, ¶A, as enacted by
34 PL 1981, c. 484, §8, is amended to read:

35 A. The association shall ~~submit to file with~~ the
36 superintendent a plan of operation and any amend-
37 ments thereto necessary or suitable to assure the
38 fair, reasonable and equitable administration of
39 the association. The plan of operation and any
40 amendments thereto shall become effective upon

1 approval in writing by the superintendent a
2 majority vote of member self-insurers. If the
3 association fails to submit a suitable plan of
4 operation by January 1, 1982, or if at any time
5 thereafter the association fails to submit suit-
6 able amendments to the plan, the superintendent
7 shall, after notice and hearing, adopt and
8 promulgate such reasonable rules as are necessary
9 or advisable to effectuate this section. Such
10 rules shall continue in force until modified by
11 the superintendent or superseded by a plan sub-
12 mitted by the association and approved by the
13 superintendent.

14 Sec. 5. 39 MRSa §23-A, sub-§5, ¶C, as enacted by
15 PL 1981, c. 484, §8, is amended to read:

16 C. The plan of operation shall:

17 (1) Establish the procedures whereby all
18 the powers and duties of the association
19 under subsection 4 will be performed;

20 (2) Establish procedures for handling
21 assets of the association;

22 (3) Adopt a reasonable mechanism and proce-
23 dure to achieve equity in assessing the
24 funds required in subsection 4, paragraph A,
25 subparagraphs (1), (2) and (3); subsection
26 4, paragraph C, subparagraph (1); and sub-
27 section 4, paragraph D.

28 Consideration shall be given to adjustments
29 for audited payroll, differential effects
30 caused by rate changes and other relevant
31 factors;

32 (4) Establish the amount and method of
33 reimbursing members of the board of direc-
34 tors under subsection 3;

35 (5) Establish procedures by which claims
36 may be filed with the association and estab-
37 lish acceptable forms of proof of covered
38 claims. A list of such claims shall be
39 periodically submitted to the association;

- 1 (6) Establish regular places and times for
2 meetings of the board of directors;
- 3 (7) Establish procedures for records to be
4 kept of all financial transactions of the
5 association, its agents and the board of
6 directors; and
- 7 ~~(8) Provide that any member self-insurer~~
8 ~~aggrieved by any final action or decision of~~
9 ~~the association may appeal to the superin-~~
10 ~~tendent within 30 days after the action or~~
11 ~~decision;~~
- 12 ~~(9) Establish the procedures whereby selec-~~
13 ~~tions for the board of directors shall be~~
14 ~~submitted to the superintendent; and~~
- 15 (10) Contain additional provisions neces-
16 sary or proper for the execution of the
17 powers and duties of the association.

18 Sec. 6. 39 MRSA §23-A, sub-§8, as enacted by PL
19 1981, c. 484, §8, is amended to read:

20 8. Examination of the association. The associa-
21 tion shall be subject to examination ~~and regulation~~
22 by the superintendent. The board of directors shall
23 submit, not later than March 30th of each year, a
24 financial report for the ~~preceeding~~ preceding calen-
25 dar year in a form approved by the superintendent.

26 STATEMENT OF FACT

27 This bill reduces the oversight responsibilities
28 of the Bureau of Insurance with respect to the Maine
29 Self-Insurance Guarantee Association.

30 1519010683