

# MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 1526

H.P. 1123 House of Representatives, May 11, 1987  
Submitted by the Department of Professional and Financial  
Regulation pursuant to Joint Rule 24.

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

EDWIN H. PERT, Clerk

Presented by Representative LEBOWITZ of Bangor.

Cosponsored by Senator COLLINS of Aroostook,  
Representatives ALIBERTI of Lewiston and RACINE of Biddeford.

STATE OF MAINE

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

1 AN ACT to Eliminate Reference to "Standard  
2 Premium" in the Workers' Compensation  
3 Self-insurance Laws.  
4

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

7 Sec. 1. 39 MRSA §23, sub-§6, ¶A, as enacted by  
8 PL 1981, c. 484, §7, is amended to read:

9 A. The bond or security deposit required of an  
10 individual self-insurer shall not be less than  
11 the greater of an amount determined by the fol-  
12 lowing formula or \$50,000. The bond or security  
13 deposit shall be the greater of an amount equal  
14 to the loss and loss adjustment expense portion  
15 of the annual standard premium for the prospec-  
16 tive fiscal coverage period or outstanding loss

1 reserves minus recoveries from all excess carriers  
2 and subrogation reduced to net collections  
3 plus 25% of annual standard premiums for the pro-  
4 spective fiscal coverage period. The percentage  
5 factor used to determine the portion of standard  
6 annual standard premium allocated for loss and  
7 loss adjustment expenses shall be acceptable to  
8 the superintendent. For the purposes of this  
9 paragraph, "annual standard premium" means the  
10 annual premium produced by applying the manual  
11 rates, rating rules excluding any premium dis-  
12 count and the experience rating procedure ap-  
13 proved by the Superintendent of Insurance for the  
14 Safety Pool of the residual market mechanism, as  
15 described in Title 24-A, section 2350, to the ex-  
16 posure and experience of the individual self-  
17 insurer.

18 For individual self-insurers who have a net worth  
19 equal to or in excess of \$10,000,000; who have  
20 had positive net earnings demonstrated by certi-  
21 fied statements of financial condition in at  
22 least 3 of the 5 latest fiscal years, including  
23 therein one of the 2 most recent years; and whose  
24 mean annual earnings for the 5 latest fiscal  
25 years are at least equal to the normal annual  
26 premium for the prospective fiscal coverage peri-  
27 od, the minimum security deposit or bond shall be  
28 an amount determined by the formula above or as  
29 hereinafter adjusted for applicable levels of  
30 working capital funds.

31 An employer meeting the above test may deduct  
32 from the penal value of its surety bond or from  
33 market value of securities deposited, an amount  
34 not exceeding demonstrated working capital in  
35 such current statement of financial condition;  
36 the bond or deposit shall not be less than  
37 \$100,000.

38 For those self-insurers unable to meet the fore-  
39 going standards, the security deposit shall be  
40 governed by this subsection. Self-insurers fail-  
41 ing these tests shall deposit acceptable funds or  
42 a surety bond in that amount produced by the for-  
43 mula to be written by a corporate surety which  
44 meets the qualifications prescribed by regula-  
45 tions of the superintendent.

1           Within 30 days after notice by the Superintendent  
2           of Insurance, the self-insurer shall post the de-  
3           posit indicated. This deadline may be extended by  
4           the superintendent for good cause, but in no  
5           event may exceed one year from the deadline for  
6           compliance as stated in the notice given to the  
7           self-insurer.

8           A bond or security deposit in excess of the  
9           amount prescribed by this subsection may be re-  
10          quired if the superintendent determines that the  
11          self-insurer has experienced a deterioration in  
12          financial condition which adversely affects the  
13          self-insurer's ability to pay expected losses.

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

18          **Sec. 2. 39 MRSA §23-A, sub-§4, ¶A, as amended by**  
19          **PL 1985, c. 371, §3, is further amended to read:**

20          **A. The association shall:**

21                 (1) Obtain from each member and file with  
22                 the superintendent individual reports speci-  
23                 fying the aggregate benefits each member  
24                 paid during the previous calendar year, and  
25                 the annual standard premium which would have  
26                 been paid by each self-insurer during the  
27                 previous calendar year ~~pursuant to manual~~  
28                 ~~rates established by the principal rating~~  
29                 ~~organization in the State and using the ex-~~  
30                 ~~perience rating procedure approved by the~~  
31                 ~~Superintendent of Insurance for that~~  
32                 ~~self-insurer.~~ These reports shall be due on  
33                 or before July 15th following the close of  
34                 that calendar year, except that this dead-  
35                 line may be extended by the superintendent  
36                 for up to 3 additional months for good cause  
37                 shown;

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

1 (a) Each individual self-insurer shall  
2 be annually assessed an amount equal to  
3 1% of the annual standard premium which  
4 would have been paid by that individual  
5 self-insurer during the prior calendar  
6 year; payment to the association shall  
7 be made no later than September 15th  
8 following the close of that calendar  
9 year. Where any such assessment is paid  
10 based in whole or in part upon esti-  
11 mates of annual standard premium for  
12 the prior calendar year, there shall be  
13 made in the next year's assessment an  
14 adjustment of the assessment of such  
15 prior year based on actual audited an-  
16 nual standard premium. Regardless of  
17 the size of the fund referred to in  
18 subparagraph (3), during its first 12  
19 months of membership, no individual  
20 self-insurer may discount or reduce  
21 this 1% assessment;

22 (b) Each group self-insurer shall be  
23 annually assessed an amount equal to  
24 .1% of the total annual standard premi-  
25 um which would have been paid by all  
26 the members of that group self-insurer  
27 during the prior calendar year; payment  
28 to the association shall be no later  
29 than September 15th following the close  
30 of that calendar year. Where any such  
31 assessment is paid based in whole or in  
32 part upon estimates of annual standard  
33 premium for the prior calendar year,  
34 there shall be made in the next year's  
35 assessment an adjustment of the assess-  
36 ment of such prior year based on actual  
37 audited annual standard premium. Re-  
38 gardless of the size of the fund re-  
39 ferred to in subparagraph (3), during  
40 its first 12 months of membership, no  
41 group self-insurer may discount or re-  
42 duce this .1% assessment;

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

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(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) 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 (2). 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-insurers which are required to be made in subparagraph (2), divisions (a) and (b). 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.

(a) The association may purchase primary excess insurance from an insurer licensed in this State for the appropriate lines of authority to defray its exposure to loss occasioned by the default of one or more of its members. Any excess insurance so purchased shall be limited to coverage of post-assessment liability of the association's members and the association shall fund any such purchase by levying a special assessment on its members for this purpose or by application of any unencumbered funds available but which have not been raised by imposition of

1 any preassessment or post-assessment.  
2 The association may obtain from each  
3 member any information it may reason-  
4 ably require in order to facilitate the  
5 securing of this primary excess insur-  
6 ance. The association shall establish  
7 reasonable safeguards designed to en-  
8 sure that information so received is  
9 used only for this purpose and is not  
10 otherwise disclosed;

11 (4) Be obligated to the extent of covered  
12 claims occurring prior to the determination  
13 of the self-insurer's insolvency, or occur-  
14 ring after such determination but prior to  
15 the obtaining of workers' compensation in-  
16 surance as otherwise required under this Ti-  
17 tle by the self-insurer. Nothing in this  
18 section shall obligate the association to  
19 pay claims against a self-insurer which are  
20 not or have not been paid as a result of a  
21 determination of insolvency or the institu-  
22 tion of bankruptcy or receivership proceed-  
23 ings which occurred prior to the effective  
24 date of this section.

25 (a) "Covered claim" means an unpaid  
26 claim against an insolvent self-insurer  
27 which relates to an injury which occurs  
28 while the self-insurer is a member of  
29 the association and which is compensa-  
30 ble under this Act;

31 (5) After paying any claim resulting from a  
32 self-insurer's insolvency, the association  
33 shall be subrogated to the rights of the in-  
34 jured employee and dependents and shall be  
35 entitled to enforce liability against the  
36 self-insurer by any appropriate action  
37 brought in its own name or in the name of  
38 the injured employee and dependents;

39 (6) Assess the fund in an amount necessary  
40 to pay:

41 (a) The obligations for the associa-  
42 tion under this section subsequent to  
43 an insolvency;

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

