

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

1
3
5
7
9
11
13
15
17
19
21
23
25
27
29
31
33
35
37
39
41
43
45
47

STATE OF MAINE
HOUSE OF REPRESENTATIVES
114TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 473, L.D. 638, Bill, "An Act to Promote Accountability in the Use of Excess Insurance"

Amend the bill by striking out all of the title and inserting in its place the following:

'An Act to Amend the Workers' Compensation Self-insurance Law'

Further amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

Sec. 1. 24-A MRSA §601, sub-§16, as enacted by PL 1979, c. 658, §1, is amended to read:

16. Self-insurance authorization. Fees applicable to each self-insurer, individual or group, seeking authorization or authorized to operate a workers' compensation self-insurance plan.

- A. For filing application for initial authorization, including all documents submitted as part of the application \$300
- B. Authorization and each annual continuation 100
- C. Filing yearly report of ~~group~~ self-insurer 50

If a self-insurer terminates its plan or otherwise does not continue to self-insure, the fee applicable to filing of yearly reports shall apply to that period in which the making of these reports is mandated.

Sec. 2. 39 MRSA §23, sub-§2, as amended by PL 1987, c. 559, Pt. B, §15-A, is further amended to read:

1 2. Proof of solvency and financial ability to pay; trust.
2 By furnishing satisfactory proof to the Superintendent of
3 Insurance of his solvency and financial ability to pay the
4 compensation and benefits, and deposit cash, satisfactory
5 securities or a security surety bond, with the Workers'
6 Compensation Commission, in such sum as the superintendent may
7 determine pursuant to subsection 6; such bond to run to the
8 Treasurer of State and his the Treasurer of State's successor in
9 office, and to be conditional upon the faithful performance of
10 this Act relating to the payment of compensation and benefits to
11 any injured employee. In case of cash or securities being
12 deposited, ~~it~~ the cash or securities shall be placed in an
13 account at interest by the Treasurer of State, and the
14 accumulation of interest on said the cash or securities so
15 deposited shall be paid credited to the account and shall not be
16 paid to the employer depositing-the-same to the extent that the
17 interest is required to support any present value discounting in
18 the determination of the amount of the deposit. The
19 ~~superintendent may at any time, upon not less than 3 days notice~~
20 ~~and following hearing, for cause deny to an employer the right to~~
21 ~~continue in the exercise of the option granted by this section.~~
22 Any security deposit shall be held by the Treasurer of State in
23 trust for the benefit of the self-insurer's employees for the
24 purposes of making payments under the Act.

25
26 The superintendent shall prescribe the form of the surety bond
27 which may be used to satisfy, in whole or in part, the employer's
28 responsibility under this section to post security. The bond
29 shall be continuous, shall be subject to nonrenewal only upon not
30 less than 60 days' notice to the superintendent and shall cover
31 payment of all present and future liabilities incurred under the
32 Act while the bond is in force and cover payments which become
33 due while the bond is in force which are attributable to injuries
34 incurred in prior periods and which are otherwise unsecured by
35 cash or acceptable securities. A bond shall be held until all
36 payments secured thereby have been made or until it has been
37 replaced by a bond issued by a qualified successor surety which
38 covers all outstanding liabilities. Payments under the bond
39 shall be due within 30 days after notice has been given to the
40 surety by the chair of the commission that the principal has
41 failed to make a payment required under the terms of an award,
42 agreement or governing law. A surety bond shall not be used to
43 fund a trust established to satisfy the requirements of this
44 section.

45
46 As an alternative to the method described in the first paragraph
47 of this subsection, an eligible employer may establish an
48 actuarially fully funded trust, funded at a level sufficient to
49 discharge those obligations incurred by the employer pursuant to
50 this Act as they become due and payable from time to time,
51 provided that the value of trust assets shall be at least equal
to the present value of such ultimate expected incurred claims

COMMITTEE AMENDMENT "A" to H.P. 473, L.D. 638

1 and claims settlement costs. The trust asset assets shall
2 consist of cash or marketable securities of a type and risk
3 character as specified in subsection 7, and shall have a situs in
4 the United States. The trustee shall submit a report to the
5 superintendent not less frequently than quarterly which lists the
6 assets comprising the corpus of the trust, including a statement
7 of their market value and the investment activity during the
8 period covered by the report. The trust shall be established and
9 maintained subject to the condition that trust assets cannot be
10 transferred or revert in any manner to the employer except to the
11 extent that the superintendent finds that the value of the trust
12 assets exceeds the present value of incurred claims and claims
13 settlement costs with an actuarially indicated margin for future
14 loss development. In all other respects, the trust instrument,
15 including terms for certification, funding, designation of
16 trustee and pay out shall be as approved by the superintendent;
17 provided, that the value of the trust account shall be
18 actuarially calculated at least annually by a casualty actuary
19 who is a member of the American Academy of Actuaries and adjusted
20 to the required level of funding. For purposes of this
21 paragraph, an "eligible employer" is one who is found by the
22 superintendent to be capable of paying compensation and benefits
23 required by this Act and:

25 A. Has positive net earnings; or

27 B. Can demonstrate a level of working capital adequate in
28 relation to its operating needs.

29
30 Notwithstanding any provision of this section or chapter, any
31 bond or security deposit required of a public employer which is a
32 self-insurer shall not exceed \$50,000, provided that such public
33 employer has a state-assessed valuation equal to or in excess of
34 \$300,000,000 and either a bond rating equal to or in excess of
35 the 2nd highest standard as set by a national bond rating agency
36 or a net worth equal to or in excess of \$25,000,000. If a
37 county, city or town relies upon a bond rating, it shall value or
38 cause to be valued its unpaid workers' compensation claims
39 pursuant to sound accepted actuarial principles. This value
40 shall be incorporated in the annual audit of the county, city or
41 town together with disclosure of funds appropriated to discharge
42 incurred claims expenses. "Public employer" includes the State,
43 the University of Maine System, counties, cities and towns.

45 In his consideration of a self-insuring entity's application for
46 authorization to operate a plan of self-insurance, the
47 superintendent may require or permit an applicant to employ valid
48 risk transfer by the utilization of primary excess insurance,
49 subject to the provisions of subsection 6. Standards respecting
50 the application of primary excess insurance shall be contained in
51 a regulation promulgated by the superintendent pursuant to the
Maine Administrative Procedure Act, Title 5, chapter 375. Primary

COMMITTEE AMENDMENT "A" to H.P. 473, L.D. 638

1 excess insurance shall be defined as insurance covering workers'
2 compensation exposures in excess of risk retained by a
3 self-insurer.

4 As a further alternative to the method methods described in this
5 subsection, an employer shall be eligible for approved
6 self-insurance status pursuant to this Act if the employer
7 submits a written guarantee of the obligations incurred pursuant
8 to this Act, the guarantee to be issued by a United States or
9 Canadian corporation which is a member of an affiliated group of
10 which the employer is a member, and which corporation is solvent
11 and demonstrates an ability to pay the compensation and benefits,
12 and the guarantee is in a form acceptable to the superintendent.
13 The guarantor shall provide quarterly financial statements,
14 audited annual financial statements and such other information as
15 the superintendent may require, and the employer shall provide a
16 bond as otherwise required by this Act in an amount not less than
17 \$1,000,000. Any such guarantor shall be deemed to have submitted
18 to the jurisdiction of the Workers' Compensation Commission and
19 the courts of this State for purposes of enforcing any such
20 guarantee. The guarantor, in all respects, shall be bound by and
21 subject to the orders, findings, decisions or awards rendered
22 against the employer for payment of compensation and any
23 penalties or forfeitures provided under this Act. The
24 superintendent, following hearing, may revoke the self-insured
25 status of the employer if at any time the assets of the guarantor
26 become impaired, encumbered or are otherwise found to be
27 inadequate to support the guarantee.

28
29 **Sec. 3. 39 MRSA §23, sub-§2-A, ¶E,** as enacted by PL 1973, c.
30 559, §2, is amended to read:

31
32 E. A statement showing the kind of operations performed or
33 to be performed; and

34
35 **Sec. 4. 39 MRSA §23, sub-§2-A, ¶E-1** is enacted to read:

36
37 E-1. An indemnity agreement in a form prescribed by the
38 superintendent which jointly and severally binds the group
39 and each member to comply with the provisions of the Act; and

40
41 **Sec. 5. 39 MRSA §23, sub-§2-A, ¶F,** as enacted by PL 1973, c.
42 559, §2, is amended to read:

43
44 F. Any and all other agreements, contracts or other
45 pertinent documents relating to the organization of the
46 employers in the group.

47
48 **Sec. 6. 39 MRSA §23, sub-§4, ¶B,** as amended by PL 1987, c. 559,
49 Pt. A, §6, is further amended to read:

50
51

1 B. Any group of employers may adopt a plan for
2 self-insurance, as a group, for the payment of compensation
3 under this chapter to their employees. No group may be
4 approved to operate a self-insurance plan in the form of a
5 corporation. Under such a group self-insurance plan the
6 group shall assume the liability of all the employers within
7 the group and pay all compensation for which the said
8 employers are liable under this chapter. Where such the plan
9 is adopted the group shall furnish satisfactory proof to the
10 superintendent of its financial ability to pay such
11 compensation for the employers in the group, its revenues,
12 their source and assurance of continuance. The
13 superintendent shall require the deposit with the Workers'
14 Compensation Commission of such securities as may be deemed
15 necessary of the kind prescribed in ~~paragraphs B to E~~
16 subsection 7 or the filing of a bond of issued by a surety
17 company authorized to transact business in this State, in an
18 amount to be determined to secure its liability to pay the
19 compensation of each employer as above provided in
20 accordance with ~~paragraph E~~ subsection 7. Such surety bond
21 must be approved as to form by the superintendent. The
22 superintendent may also require that any and all agreements,
23 contracts and other pertinent documents relating to the
24 organization of the employers in the group shall be filed
25 with ~~him~~ the superintendent at the time the application for
26 group self-insurance is made. Such application shall be on a
27 form prescribed by the superintendent. The superintendent
28 shall have the authority to deny the application of the
29 group to pay such compensation ~~or to revoke his consent~~
30 furnished under for failure to satisfy any applicable
31 requirement of this section at any time for good cause
32 shown. For the purposes of this paragraph, "good cause"
33 means the inability to pay, in a timely fashion, present and
34 future compensation and other benefits for which employers
35 are liable under this chapter. The superintendent shall
36 approve or disapprove an application within 90 days. The
37 group qualifying under this paragraph shall be known as a
38 self-insurer.

39 Sec. 7. 39 MRSA §23, sub-§4, ¶E, as amended by PL 1979, c. 577,
40 §7, is further amended to read:

41
42
43 E. If for any reason, the status of a group self-insurer
44 under this paragraph is terminated, the securities ~~or~~ and the
45 surety bond ~~on~~ or the deposit referred to herein shall
46 remain in the custody continue to be held by the Treasurer
47 of State and remain subject to the control of the Workers'
48 Compensation Commission for a period of at least 36 months
49 until all claims secured thereby have been discharged. At
50 the expiration of such time or such further period as the
51 superintendent may deem proper and warranted, ~~he~~ the
superintendent may accept in lieu thereof, and for the

1 additional purpose of securing such further and future
contingent liability as may arise from prior injuries to
3 workers and be incurred by reason of any change in the
condition of such workers warranting the board making
5 subsequent awards for payment of additional compensation, a
policy of insurance furnished by the group self-insurer, its
7 successor or assigns or other carrying on or liquidating
such self-insurance group. Such policy shall be in a form
9 approved by the Superintendent of Insurance and issued by
the state fund or any insurance company licensed to issue
11 this class of insurance in this State. It shall only be
issued for a single complete premium payment in advance by
13 the group self-insurer. It shall be given in an amount to be
determined by the superintendent and when issued shall be
15 noncancellable for any cause during the continuance of the
liability secured and so covered.

17

Sec. 8. 39 MRSA §23, sub-§4-A is enacted to read:

19

4-A. Annual renewal; actuarial evaluation. Renewal and
21 actuarial evaluation are governed by this subsection.

23

A. Any approval granted by the superintendent to an
individual self-insurer or group self-insurer shall be for a
25 term of not more than one year. Application for renewal of
approval to self-insure shall be submitted to the
27 superintendent not less than 21 days prior to the
self-insurer's renewal date, except that evidence of excess
29 coverage may be submitted up to 3 working days prior to
renewal. A renewal application shall contain all reports,
31 statements and other data required to be filed annually
under rules adopted by the superintendent; copies of any
33 proposed excess contracts, binders or cover notes; evidence
of security posted; notice of any changes in servicing
35 arrangements; and notice of any change in control of the
self-insurer and its effect, if any, on guarantees provided
37 pursuant to subsection 2. The superintendent may refuse to
grant or renew self-insurance approval based upon any of
39 the following grounds:

41

(1) Failure to submit any information required by law
or rule or which is reasonably requested by the
43 superintendent;

45

(2) Failure of a self-insurer to establish that it has
met all applicable requirements of law or rule;

47

(3) Fraud or misrepresentation in the application; or

49

(4) Any ground upon which approval may be suspended or
51 revoked as provided in subsection 9.

COMMITTEE AMENDMENT "A" to H.P. 473, L.D. 638

1 B. Each individual self-insured employer, except those
3 utilizing an actuarially fully funded trust pursuant to
5 subsection 2, shall be required to obtain an actuarial
7 evaluation of undischarged claims and claims settlement
9 liabilities not less frequently than once every 3 years.
11 This review and evaluation shall be performed by a casualty
13 actuary who is a member of the American Academy of
15 Actuaries. Upon approval to self-insure, the superintendent
17 shall indicate the deadline for that self-insurer to
19 complete an actuarial review. In addition to this triennial
21 review, the superintendent may require the reserves and
23 liabilities of a self-insurer to be reviewed and evaluated
25 as often as the superintendent deems necessary.

15 Any self-insurer that develops an imputed annual standard
17 premium not exceeding \$50,000 and that demonstrates that it
19 has provided security for its workers' compensation
21 exposures in an amount not less than 135% of its case-based
23 claims reserves, as evaluated annually, shall be excused
25 from providing an actuarial evaluation in any year in which
27 these conditions are satisfied. For the purposes of this
29 subsection, "case-based reserves" means undischarged claims
31 that have arisen during the period of self-insurance and of
33 which the employer has had formal notice. This exception
35 shall not be construed to limit the superintendent's
37 authority to require an actuarial evaluation when the
39 superintendent determines one is necessary.

29 C. Each individual self-insurer except a public employer
31 shall demonstrate in its initial or renewal application that
33 it has working capital adequate to its operating needs.

33 D. When a self-insurer's excess contract expires on a date
35 other than the renewal date for its self-insurance approval,
37 the self-insurer shall file evidence of any required excess
39 coverage no later than 3 working days before the date of
41 expiration of its coverage.

39 **Sec. 9. 39 MRSA §23, sub-§6, ¶C is enacted to read:**

41 C. The superintendent may adopt rules establishing specific
43 requirements applicable to security deposits and excess
45 insurance, including, but not limited to, provisions
47 governing standards for waiver of excess insurance, use of
49 trusts in lieu of security deposits and release or
51 application of deposit funds.

49 **Sec. 10. 39 MRSA §23, sub-§7, as enacted by PL 1981, c. 484,**
51 **§7, is amended to read:**

51 **7. Acceptable deposit funds or surety bonds. In addition**
to cash, the deposit funds acceptable to the superintendent as a

COMMITTEE AMENDMENT "A" to H.P. 473, L.D. 638

1 security deposit shall include United States Government bonds,
2 notes or bills, issued or guaranteed by the United States of
3 America; bonds secured by the full faith, credit and taxing power
4 of political subdivisions of the United States rated in the 3
5 highest grades by a national rating agency such as Moody's,
6 Standard and Poor's, or Fitch, as of the foregoing year end;
7 money market funds which are invested only in United States
8 Government or government agency obligations with a maturity of
9 not exceeding one year or less; high grade commercial paper rated
10 as either A-1 or P-1 by a national-rating-agency nationally
11 recognized bond rating service such as Moody's, Standard and
12 Poor's or Fitch, or money market funds invested in such paper;
13 certificates of deposit issued by a duly chartered commercial
14 bank or thrift institution in the State which are is protected by
15 the Federal Deposit Insurance Corporation, and if such a bank or
16 institution possesses assets of at least \$100,000,000 and
17 maintains a ratio of capital to assets equal to or greater than 6
18 1/2%; savings certificates issued by any savings and loan
19 association in the State which are protected by the Federal
20 Savings and Loan Insurance Corporation, and if such an
21 association possesses assets of at least \$100,000,000 and
22 maintains a ratio of capital to assets equal to or greater than 6
23 1/2%; surety bonds in a form prescribed by the superintendent
24 which are issued by any corporate surety which meets the
25 qualifications prescribed by regulation rule of the
26 superintendent, and such other investments approved by the
27 superintendent.

29 **Sec. 11. 39 MRSA §23, sub-§7-A**, as enacted by PL 1985, c. 371,
30 §1, is amended to read:

31
32 **7-A. Form of excess contracts.** All primary excess
33 insurance contracts issued or renewed after the effective date of
34 this subsection shall be issued by companies that meet the
35 requirements of subsection 8 and shall name the self-insurer and
36 the Maine Self-Insurance Guarantee Association as coinsureds to
37 the extent of their respective interests. These excess contracts
38 shall recognize the Maine Self-Insurance Guarantee Association's
39 rights of recovery, within the terms of coverage provided by the
40 contract, for payments made by the association to or on behalf of
41 claimants regarding covered claims and for claims in the course
42 of settlement, the value of which when reduced to payments will
43 create an obligation on the part of the excess carrier to
44 reimburse the association to the extent of funds disbursed by the
45 association to discharge covered claims. The requirements of
46 this subsection shall apply to any excess contract issued to any
47 individual or group self-insurer as part of a self-insurance
48 program approved for use within this State and shall be in
49 addition to any other requirement applicable to excess contracts
50 imposed by law or rule.

51

COMMITTEE AMENDMENT "A" to H.P. 473, L.D. 638

1 Excess insurance contracts shall further specify that the excess
2 carrier and the Maine Self-Insurance Guarantee Association may
3 enter into agreements on the terms of settlement and distribution
4 of benefits accruing to claimants within the limits of the
5 authority of the parties to make settlements with respect to any
6 coverage year.

7
8 To the extent that the Maine Self-Insurance Guarantee Association
9 succeeds to a recovery of benefits from any excess carrier on
10 behalf of claimants, those benefits shall be timely disbursed by
11 the association to or on behalf of claimants as they become due
12 and payable pursuant to this Act. Funds recovered under primary
13 excess contracts on behalf of claimants shall be applied
14 consistent with the terms of coverage under the contract, to
15 loss, loss adjustment expense and attorneys' fees which are
16 payable under the Act.

17
18 **Sec. 12. 39 MRSA §23, sub-§§8 and 9, as enacted by PL 1981, c.**
19 **484, §7, are amended to read:**

21 **8. Qualifications for excess carriers.** No workers'
22 compensation contract or policy issued after the effective date
23 of this section may be recognized by the superintendent in
24 considering the ability of an individual or group self-insurer to
25 fulfill its financial obligations under this Act, unless the
26 contract or policy is issued by an admitted insurance company or
27 by an ~~approved alien unincorporated insurer or other subsequently~~
28 ~~approved insurance exchange possessed of similar capitalization,~~
29 ~~deposit funds and underwriting capabilities which meets the~~
30 ~~minimum qualifications prescribed in Title 24-A and regulations~~
31 appertaining to admission or eligibility requirements Lloyd's of
32 London, a syndicate of unincorporated alien insurers which has
33 established and maintains United States trust funds consistent
34 with the requirements of Title 24-A, section 731, paragraph C.

35
36 **9. Revocation or termination of the self-insurance**
37 **privilege.** The following may constitute grounds for denial of the
38 right of any individual or group to continue the option of
39 self-insurance:

41 A. Failure to comply with regulations adopted by the
42 superintendent or any provisions of this Act within 14 days
43 or such other time as may be established by order of the
44 superintendent of notice of such failure;

45 B. Failure to comply with any lawful order of the
46 superintendent;

47 C. Repeated failure to comply with regulations of the
48 superintendent or any provisions of this Act;

51

1 D. Committing an unfair or deceptive act or practice as
2 defined in Title 24-A, sections 2151 to 2167;

3
4 E. Deterioration of financial condition adversely affecting
5 the self-insurer's ability to pay expected losses; or

6
7 F. Failure to pay any lawful assessment of the Maine
8 Self-Insurance Guarantee Association.

9
10 Notwithstanding Title 5, section 10051, the superintendent is
11 expressly granted the authority to revoke or suspend the right of
12 an individual or group to continue the option to self-insure
13 after a hearing held on not less than 7 days' notice in
14 accordance with Title 5, chapter 375, subchapter IV and Title
15 24-A, chapter 3.

16
17 **Sec. 13. 39 MRSA §23, sub-§9-A is enacted to read:**

18
19 9-A. Termination of self-insurance. If a self-insured
20 employer elects to terminate its self-insurance program, or a
21 portion of a self-insurance program, it shall, not later than 45
22 days prior to terminating its program, submit a termination plan
23 to the superintendent. The requirements of this subsection apply
24 to that part of the self-insurance program that is being
25 terminated. The plan shall include, but not be limited to,
26 procedures for claims handling, reservation of assets to be
27 maintained in the State to discharge claims liabilities and other
28 obligations under this Act, and a description of how ultimate
29 reserves were determined that require reservation of funds. The
30 termination plan shall contain a written agreement that the
31 self-insurer shall continue to be subject to informational
32 filings respecting financial condition and actuarial evaluations
33 of claims and claims expense reserves and loss transfers when
34 determined necessary by the superintendent to ensure that claims
35 are adequately secured. The plan shall also comply with any
36 terms and conditions which may be prescribed by rule adopted by
37 the superintendent. In order to protect the interests of
38 claimants, the superintendent may require a further deposit to be
39 held in trust by the Treasurer of State, or may require full
40 funding of workers' compensation liabilities.

41
42 If a self-insurer's approval is revoked, suspended or otherwise
43 terminated in a manner other than by its election, the
44 superintendent shall issue an order that prescribes terms and
45 conditions related to the termination which shall, to the extent
46 practicable, conform to the requirements governing termination
47 plans as prescribed by this subsection and rules promulgated
48 under this subsection. In the event that a self-insurer attempts
49 to terminate its approval in this State without filing a plan
50 acceptable to the superintendent, the superintendent shall issue
51 an order prescribing the terms and conditions of the
termination. Any order issued pursuant to this subsection,

1 including an order directing a self-insurer to produce relevant
2 information, may be enforced as provided by Title 24-A, section
3 214.

5 This subsection applies to any termination of a self-insurer's
6 approval, whether in whole or in part, including those resulting
7 from a business sale, split-up, spin-off, leveraged buyout,
8 reorganization, termination of a guarantee provided under
9 subsection 2, or cessation of business in the State.

11 **Sec. 14. 39 MRSA §23-A, sub-§2, as amended by PL 1987, c. 95,**
12 **§3, is further amended to read:**

13

14 **2. Created; legal entity.** There is created a nonprofit
15 unincorporated legal entity to be known as the Maine
16 Self-Insurance Guarantee Association. All self-insurers, as
17 defined in this Title, shall be and remain members of the
18 association as a condition of authority to ~~self-insure~~
19 self-insure in this State, except that all of public employers
20 which are individual self-insurers, with a state-assessed
21 valuation equal to or in excess of \$300,000,000 and either has
22 net worth equal to or in excess of \$25,000,000 or has a bond
23 rating equal to or in excess of the 2nd highest standard as set
24 by a national bond rating organization shall not be subject to
25 this subsection. Public employers that are group self-insurers,
26 with a state-assessed valuation equal to or in excess of
27 \$5,000,000,000 are not subject to this subsection. However, if a
28 self-insurer relying on a bond rating is a county, city or town,
29 it shall value or cause to be valued its unpaid workers'
30 compensation claims pursuant to sound accepted actuarial
31 principles. This value shall be incorporated in the annual audit
32 of the county, city or town together with disclosure of funds
33 appropriated to discharge incurred claims expenses. The
34 association shall perform its functions under a plan of operation
35 established or amended, or both, and approved by the
36 superintendent and shall exercise its powers through the board of
37 directors established in this section.

39 **A.** A self-insurer shall be deemed to be a member of the
40 association for purposes of another self-insurer's
41 insolvency, as defined in subsection 6, when:

43 (1) The self-insurer is a member of the association
44 when an insolvency occurs; or

45 (2) The self-insurer has been a member of the
46 association at some point in time during the ~~12-month~~
47 36-month period immediately ~~preceeding~~ preceding the
48 insolvency in question.

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

COMMITTEE AMENDMENT "A" to H.P. 473, L.D. 638

1
3
5
7
9
11
13
15
17
19
21
23
25
27
29
31
33
35
37
39
41
43
45
47
49
51

(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.

C. In determining the membership of the association pursuant to paragraphs A and B for any date after January 1, 1983, no employer claiming self-insurer status may be deemed to be a member of the association on any date after January 1, 1983, unless that employer is at that time registered as a self-insurer by the superintendent pursuant to section 23, subsection 11.

Sec. 15. 39 MRSA §23-A, sub-§4, ¶A, as amended by PL 1987, c. 272, §2, is further amended to read:

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. These reports shall be due on or before July 15th following the close of that calendar year, except that this deadline may be extended by the superintendent for up to 3 additional months for good cause shown;

(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 September 15th following the close of that calendar year. Where any such assessment is paid based in whole or in part upon estimates of annual standard premium for the prior calendar year, there shall be made in the next year's assessment an adjustment of the assessment

1 of such prior year based on actual audited annual
3 standard premium. Regardless of the size of the
5 fund referred to in subparagraph (3), during its
7 first 12 30 months of membership, no individual
9 self-insurer may discount or reduce this 1%
11 assessment;

13 (b) Each group self-insurer shall be annually
15 assessed an amount equal to .1% of the total
17 annual standard premium which would have been paid
19 by all the members of that group self-insurer
21 during the prior calendar year; payment to the
23 association shall be no later than September 15th
25 following the close of that calendar year. Where
any such assessment is paid based in whole or in
part upon estimates of annual standard premium for
the prior calendar year, there shall be made in
the next year's assessment an adjustment of the
assessment of such prior year based on actual
audited annual standard premium. Regardless of the
size of the fund referred to in subparagraph (3),
during its first 12 30 months of membership, no
group self-insurer may discount or reduce this .1%
assessment;

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

31 (d) If a self-insurer is a member of the
33 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

35 (e) If application of the contribution rates
37 referred to in divisions (a) and (b) would produce
39 an amount in excess of the limits of the fund
41 established in subparagraph (3) an equitable
proration shall be made;

43 (3) Administer a fund, to be known as the Maine
45 Self-Insurance Guarantee Fund, which shall receive the
47 assessments required in subparagraph (2). This Prior
49 to December 1, 1992, this fund shall not exceed
51 \$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). After
November 30, 1992, this fund shall not exceed
\$2,000,000, except that once the fund reaches

1 \$2,000,000, the fund shall not exceed \$2,000,000 plus
2 all subsequent initial assessments of new member
3 self-insurers which are required to be made in
4 subparagraph (2), divisions (a) and (b). The costs of
5 administration by the association shall be borne by the
6 fund, and the association is authorized to secure
7 reinsurance and bonds and to otherwise invest the
8 assets of the fund to effectuate the purpose of the
9 association, subject to the approval of the
10 Superintendent of Insurance.

11
12 (a) The association may purchase primary excess
13 insurance from an insurer licensed in this State
14 for the appropriate lines of authority to defray
15 its exposure to loss occasioned by the default of
16 one or more of its members. Any excess insurance
17 so purchased shall be limited to coverage of
18 post-assessment liability of the association's
19 members and the association shall fund any such
20 purchase by levying a special assessment on its
21 members for this purpose or by application of any
22 unencumbered funds available but which have not
23 been raised by imposition of any preassessment or
24 post-assessment. The association may obtain from
25 each member any information it may reasonably
26 require in order to facilitate the securing of
27 this primary excess insurance. The association
28 shall establish reasonable safeguards designed to
29 ensure that information so received is used only
30 for this purpose and is not otherwise disclosed;

31
32 (4) Be obligated to the extent of covered claims
33 occurring prior to the determination of the
34 self-insurer's insolvency, or occurring after such
35 determination but prior to the obtaining of workers'
36 compensation insurance as otherwise required under this
37 Title by the self-insurer. Nothing in this section
38 shall obligate the association to pay claims against a
39 self-insurer which are not or have not been paid as a
40 result of a determination of insolvency or the
41 institution of bankruptcy or receivership proceedings
42 which occurred prior to the effective date of this
43 section.

44 (a) "Covered claim" means an unpaid claim against
45 an insolvent self-insurer which relates to an
46 injury which occurs while the self-insurer is a
47 member of the association and which is compensable
48 under this Act;

49
50 (5) After paying any claim resulting from a
51 self-insurer's insolvency, the association shall be

COMMITTEE AMENDMENT "A" to H.P. 473, L.D. 638

- 1 subrogated to the rights of the injured employee and
dependents and shall be entitled to enforce liability
3 against the self-insurer by any appropriate action
brought in its own name or in the name of the injured
5 employee and dependents;
- 7 (6) Assess the fund in an amount necessary to pay:
- 9 (a) The obligations for the association under
this section subsequent to an insolvency;
- 11 (b) The expenses of handling covered claims
13 subsequent to an insolvency;
- 15 (c) The costs of examinations under subsection 8;
and
- 17 (d) Other expenses authorized by this subchapter;
- 19 (7) Investigate claims brought against the association
21 and adjust, compromise, settle and pay covered claims
to the extent of the association's obligation and deny
23 all other claims. The association may review
settlements to which the insolvent self-insurer was a
25 party to determine the extent to which such settlements
may be properly contested;
- 27 (8) Notify such persons as the superintendent directs
29 under subsection 7;
- 31 (9) Handle claims through its employees or through one
or more self-insurers or other persons designated as
33 servicing facilities. Designation of a servicing
facility is subject to the approval of the
35 superintendent, but designation of a member
self-insurer as a servicing facility may be declined by
37 such self-insurer;
- 39 (10) Reimburse each servicing facility for obligations
of the association paid by the facility and for
41 expenses incurred by the facility while handling claims
on behalf of the association; and
- 43 (11) Pay the other expenses of the association
45 authorized by this section.
- 47 (a) Establish in the plan of operation a
mechanism to calculate the assessments required by
49 subparagraphs (1), (2) and (3) by a simple and
equitable means to convert from policy or fund
51 years which are different from a calendar year.

COMMITTEE AMENDMENT "A" to H.P. 473, L.D. 638

1
3
5
7
9
11
13
15
17
19
21
23
25
27
29
31
33
35
37
39
41
43
45
47
49
51

Section 1 of the amendment provides that the application and annual renewal fees and the fee for filing of required annual reports with the Bureau of Insurance apply both to individual and group self-insurers.

Section 2 of the amendment limits the use of surety bonds used in lieu of cash or securities in satisfaction of deposit requirements. The limitation provides that only those bonds which remain in force for the life of outstanding claims may be utilized. Language is added stating that security deposits will be held in trust for the benefit of employees making claims under the Act. The transfer of trust assets to a self-insurer using a fully funded trust may only occur after a finding by the superintendent that such assets are in excess of liabilities.

Section 4 of the amendment provides that group self-insurers shall execute an agreement with employers establishing joint and several liability of all participants in the program.

Section 6 of the amendment provides that corporations may no longer be formed to operate a group self-insurance trust fund. This avoids corporate immunity which might insulate member employers from claims liabilities in a manner which is inconsistent with the statutory mandate of joint and several liability.

Section 7 of the amendment provides that deposits will be held until all claims secured thereby have been discharged.

Section 8 of the amendment provides that self-insurers would be required to apply for annual certification of their programs. Specific grounds for refusal to renew are set out in the amendment. Additionally, self-insurers would be required to periodically furnish actuarial evaluations of undischarged claims liability, in order to determine the adequacy of security provided.

Section 9 of the amendment establishes rulemaking authority for the superintendent to prescribe additional excess insurance and security deposit requirements for group and individual self-insurers.

Section 10 of the amendment strengthens and clarifies the requirements governing the form of securities considered acceptable.

Sections 11 and 12 of the amendment provide that the authority to provide excess insurance policies to self-insurers is limited to licensed insurers, with specific authorization allowing the use of Lloyd's of London. Section 10 of the

COMMITTEE AMENDMENT "A" to H.P. 473, L.D. 638

1 amendment also provides a 7-day notice period for hearings held
to terminate the self-insurance option.

3

5 Section 13 of the amendment adds a provision to require
employers terminating their self-insurance programs in whole or
in part to file a plan of termination.

7

9 Section 14 of the amendment provides that the period of time
a self-insurer is subject to post-insolvency assessments is
extended from 12 months to 36 months. This section also provides
11 an exemption from Maine Self-Insurance Guarantee Association, or
MSIGA, membership for large group self-insurers comprised of
13 public employers.

15 Section 15 of the amendment provides that the period of time
during which assessments on new members of MSIGA may not be
17 discounted or reduced is increased from 12 months to 30 months.
This change is needed to increase the MSIGA fund to \$2,000,000.
19 In addition, because initial MSIGA members were fully assessed
over a 30-month period, while more recent members have been
21 subject to the assessment only over a 12-month period, this
change also ensures that all self-insurers are treated equitably.

23

25 Section 15 of the amendment also provides that the
preassessment fund of the MSIGA will be increased from \$1,000,000
to \$2,000,000. The delay in effecting the \$2,000,000 fund level
27 will allow sufficient time for the change in new member
assessments to cause an increase in the fund to \$2,000,000
29 without having an assessment of the full membership.

Reported by the Committee on Banking and Insurance
Reproduced and distributed under the direction of the Clerk of the
House
6/16/89

(Filing No. H-595)