

# MAINE STATE LEGISLATURE

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# 114th MAINE LEGISLATURE

FIRST REGULAR SESSION - 1989

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Legislative Document

No. 638

H.P. 473

House of Representatives, March 7, 1989

Reference to the Committee on Banking and Insurance suggested and ordered printed.

*Ed Pert*

EDWIN H. PERT, Clerk

Presented by Representative RYDELL of Brunswick.

Cosponsored by Representative ALLEN of Washington, Representative GARLAND of Bangor and Senator COLLINS of Aroostook.

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STATE OF MAINE

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

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An Act to Promote Accountability in the Use of Excess Insurance.

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

3           **Sec. 1. 24-A MRSA §4433, sub-§2, ¶¶E and F, as enacted by PL**  
5           **1987, c. 707, §6, are amended to read:**

7           E. Title insurance; and

9           F. Financial guaranty insurance. ; and

11           **Sec. 2. 24-A MRSA §4433, sub-§2, ¶G is enacted to read:**

13           G. Excess insurance when the policy covers risks assumed  
15           by a self-insurer or group self-insurer qualifying under  
17           Title 39, section 23.

19           **Sec. 3. 39 MRSA §23-A, sub-§4, ¶A, as amended by PL 1987, c.**  
21           **272, §2, is further amended to read:**

23           A. The association shall:

25           (1) Obtain from each member and file with the  
27           superintendent individual reports specifying the  
29           aggregate benefits each member paid during the  
31           previous calendar year, and the annual standard  
33           premium which would have been paid by each  
35           self-insurer during the previous calendar year. These  
37           reports shall be due on or before July 15th following  
39           the close of that calendar year, except that this  
41           deadline may be extended by the superintendent for up  
43           to 3 additional months for good cause shown;

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

47           (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 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 months of membership, no

1 individual self-insurer may discount or reduce  
3 this 1% assessment;

5 (b) Each group self-insurer shall be annually  
7 assessed an amount equal to .1% of the total  
9 annual standard premium which would have been  
11 paid by all the members of that group  
13 self-insurer during the prior calendar year;  
15 payment to the association shall be no later than  
17 September 15th following the close of that  
19 calendar year. Where ~~any--such~~ an assessment is  
21 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 the 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 months of membership, no  
group self-insurer may discount or reduce this  
.1% assessment;

23 (c) each excess insurer shall be annually  
25 assessed an amount equal to 1% of the net direct  
27 written premiums on policies when the policy  
29 covers risks assumed by a self-insurer or group  
31 self-insurer qualifying under section 23; payment  
to the association shall be no later than  
September 15th following the close of that  
calendar year;

33 ~~(e)~~ (d) Each member self-insurer shall be notif  
35 ed of the assessment no later than 30 days before  
it is due;

37 ~~(d)~~ (e) If a self-insurer is a member of the  
39 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

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

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

1 \$1,000,000 plus all subsequent initial assessments of  
2 new member self-insurers which are required to be made  
3 in subparagraph (2), divisions (a) and (b). The costs  
4 of administration by the association shall be borne by  
5 the fund, and the association is authorized to secure  
6 reinsurance and bonds and to otherwise invest the  
7 assets of the fund to effectuate the purpose of the  
8 association, subject to the approval of the  
9 Superintendent of Insurance.

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

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

45 (a) "Covered claim" means an unpaid claim  
46 against an insolvent self-insurer which relates  
47 to an injury which occurs while the self-insurer  
48 is a member of the association and which is  
49 compensable under this Act or an unpaid claim  
50 against an excess insurer which provided excess  
51 insurance to cover risks assumed by a  
52 self-insurer or group self-insurer qualifying  
53 under section 23;

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

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

7 **Sec. 4. 39 MRSA §23-A, sub-§4, ¶¶C and D,** as enacted by PL  
8 1981, c. 484, §8, are amended to read:

9  
10 C. The following pertains to post-insolvency assessment.

11  
12 (1) In the event the assets of the fund are not  
13 sufficient to pay the obligations of the association,  
14 then the association shall make an additional  
15 assessment as follows.

16  
17 (a) Each individual self-insurer shall be  
18 assessed an amount not in excess of 2% each year  
19 of the annual standard premium which would have  
20 been paid by that individual self-insurer during  
21 the prior calendar year. The assessments of each  
22 member individual self-insurer shall be in the  
23 proportion that the annual standard premium of  
24 the individual self-insurer for the premium  
25 calendar year bears to the annual standard  
26 premium of all member self-insurers for the  
27 preceding calendar year and the net direct  
28 written premium of all excess insurers assessed  
29 under this section for the preceding calendar  
30 year.

31  
32 (b) Each group self-insurer shall be assessed an  
33 amount not in excess of .2% each year of the  
34 total annual standard premium which would have  
35 been paid by all the members of that group  
36 self-insurer during the prior calendar year. The  
37 assessments of each member group self-insurer  
38 shall be in the proportion that the annual  
39 standard premium of the group self-insurer for  
40 the premium calendar year bears to the annual  
41 standard premium of all member self-insurers for  
42 the preceding calendar year and the net direct  
43 written premium of all excess insurers assessed  
44 under this section for the preceding calendar  
45 year.

46  
47 (c) Each excess insurer shall be assessed an  
48 amount not in excess of 2% each year of the net  
49 direct written premium on policies covering risks  
50 assumed by a self-insurer or group self-insurer  
51 qualifying under section 23. The assessments of  
each excess insurer shall be in

1                   the proportion that the net direct written  
3                   premium for the preceding calendar year bears to  
5                   the net direct written premiums of all excess  
7                   insurers assessed under this section for the  
                    preceding calendar year plus the annual standard  
                    premium of all member self-insurers for the  
                    preceding calendar year.

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

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

17                   (4) Delinquent assessments, except as provided in  
19                   subparagraph (3) shall bear interest at the rate to be  
21                   established by the board, but not to exceed the  
23                   discount rate of the Federal Reserve Bank, Boston,  
                    Massachusetts, on the due date of the assessment, plus  
                    4% annually, computed from the due date of the  
                    assessment.

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

31                   D. No individual self-insurer may be assessed in any  
33                   calendar year an amount greater than 2.5% of the annual  
35                   standard premium which would have been paid by that  
37                   self-insurer during the prior calendar year. No group  
39                   self-insurer may be assessed in any calendar year an amount  
41                   greater than .25% of the total annual standard premium  
43                   which would have been paid by all the members of that group  
45                   self-insurer during the prior calendar year. No excess  
47                   insurer may be assessed in any calendar year an amount  
                    greater than 2.5% of the net direct written premium on  
                    policies covering risk assumed by a qualifying self-insurer  
                    during the prior calendar year. If the maximum assessment  
                    does not provide in any one year an amount sufficient to  
                    make all necessary payments, the funds available shall be  
                    prorated and the unpaid portion shall be paid as soon  
                    thereafter as funds become available.

49                   There shall be established in the plan of operations a  
                    mechanism to calculate the assessments required by this



1 section by a simple and equitable means to convert from  
2 policy or fund years which are different from a calendar  
3 year.

5 **Sec. 5. 39 MRSA §23-A, sub-§6**, as enacted by PL 1981, c. 484,  
6 §8, is amended to read:

7  
8 **6. Insolvency.** A self-insurer or excess insurer shall be  
9 insolvent for the purposes of this section under the following  
10 circumstances:

11 A. Determination of insolvency by a court of competent  
12 ~~jurisdiction~~ jurisdiction; and

13  
14 B. Institution of bankruptcy proceedings by or regarding  
15 the member self-insurer or excess insurer.

16  
17 **Sec. 6. 39 MRSA §23-A, sub-§7**, as enacted by PL 1981, c. 484,  
18 §8, is amended to read:

19  
20 **7. Powers and duties of superintendent.** The powers and duties  
21 of the superintendent are as follows.

22  
23 A. The superintendent shall:

24  
25 (1) Notify the association of the existence of an  
26 insolvent member self-insurer and insolvent excess  
27 insurer not later than 30 days after he the  
28 superintendent receives notice of an insolvency  
29 pursuant to the standards set forth in subsection 6.

30  
31 B. The superintendent may:

32  
33 (1) Require that the association notify the insureds  
34 of the insolvent self-insurer or the insolvent excess  
35 insurer and any other interested parties of the  
36 insolvency and of their rights under this section.  
37 Such ~~These~~ notifications shall be by mail at their  
38 last ~~known~~ known addresses, where when available, but  
39 if required information for notification is not  
40 available, notice by publication in a newspaper of  
41 general circulation in this State shall be sufficient;  
42 and

43  
44 (2) Revoke the designation of any servicing facility  
45 if he the superintendent finds claims are being  
46 handled unsatisfactorily.

47  
48  
49

#### 50 STATEMENT OF FACT

51

52 This bill requires excess insurers to distinguish premiums  
53 generated from policies covering self-insurers under the  
workers' compensation system from those written on all other

1 types of coverage. The purpose for this distinction is to  
2 enable both the Maine Self-Insurance Guaranty Association and  
3 the Maine Insurance Guaranty Association to properly assess  
4 excess insurers on the proportion of premium written on  
5 coverages subject to each of those guaranty associations. In  
6 the past, excess insurers were only assessed by the Maine  
7 Insurance Guaranty Association. The Maine Self-Insurance  
8 Guaranty Association was unable to assess excess insurers.

9  
10 This bill requires the Maine Self-Insurance Guaranty  
11 Association to assume responsibility for that part of an  
12 insolvent excess insurer's liabilities resulting from policies  
13 written on behalf of member self-insurers. Previously, the  
14 Maine Insurance Guaranty Fund was being held responsible for  
15 policies written for self-insurers by excess insurers which  
16 ultimately became insolvent. As a result, commercial carriers  
17 and their policy holders were being held financially responsible  
18 for claims arising under policies written on behalf of  
19 self-insurers. With this bill, self-insurers will have greater  
20 incentives to ensure that the excess carriers they choose are  
21 financially sound.