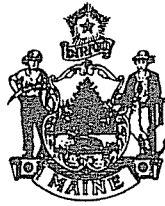


MAINE STATE LEGISLATURE

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115th MAINE LEGISLATURE

FIRST REGULAR SESSION-1991

Legislative Document

No. 1355

H.P. 935

House of Representatives, March 28, 1991

Reference to the Committee on Labor suggested and ordered printed.

A handwritten signature in cursive script that reads "Ed. Pert".

EDWIN H. PERT, Clerk

Presented by Speaker MARTIN of Eagle Lake.

Cosponsored by Senator THERIAULT of Aroostook, Representative MITCHELL of Vassalboro and Senator CLARK of Cumberland.

STATE OF MAINE

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

**An Act to Expand the Financing Options of Self-insurers for Securing
the Obligation to Pay Compensation and Benefits under the Workers'
Compensation Act.**



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

2
3 Sec. 1. 39 MRSA §23, sub-§2, as amended by PL 1989, c. 435,
4 §2, is further amended to read:

6 2. **Proof of solvency and financial ability to pay; trust.**
7 By furnishing satisfactory proof to the Superintendent of
8 Insurance of solvency and financial ability to pay the
9 compensation and benefits, and deposit cash, satisfactory
10 securities, irrevocable letters of credit issued by a qualified
11 financial institution or a surety bond, with the Workers'
12 Compensation Commission, in such sum as the superintendent may
13 determine pursuant to subsection 6; such bond to run to the
14 Treasurer of State and the Treasurer of State's successor in
15 office, and to be conditional upon the faithful performance of
16 this Act relating to the payment of compensation and benefits to
17 any injured employee. In case of cash or securities being
18 deposited, the cash or securities shall ~~shall~~ **must** be placed in an
19 account at interest by the Treasurer of State, and the
20 accumulation of interest on the cash or securities so deposited
21 shall ~~shall~~ **must** be credited to the account and shall ~~may~~ **not** be paid
22 to the employer to the extent that the interest is required to
23 support any present value discounting in the determination of the
24 amount of the deposit. Any security deposit shall ~~shall~~ **must** be held by
25 the Treasurer of State in trust for the benefit of the
26 self-insurer's employees for the purposes of making payments
27 under the Act.

28
29 The superintendent shall prescribe the form of the irrevocable
30 letter of credit that may be used to satisfy, in whole or in
31 part, the employer's responsibility under this section to post
32 security. The irrevocable letter of credit must be the
33 individual obligation of the issuing financial institution, may
34 not be subject to any agreement, condition or qualification
35 between the financial institution and the employer and may not in
36 any way be contingent upon reimbursement by the employer. The
37 irrevocable letter of credit is automatically extended for one
38 year from the date of expiration unless, 60 days prior to any
39 expiration date, the issuing financial institution notifies the
40 chair of the commission that the financial institution elects not
41 to renew the letter of credit.

42
43 The superintendent shall prescribe the form of the surety bond,
44 which may be used to satisfy, in whole or in part, the employer's
45 responsibility under this section to post security. The bond
46 shall ~~shall~~ **must** be continuous, shall be subject to nonrenewal only
47 upon not less than 60 days' notice to the superintendent and
48 shall, cover payment of all present and future liabilities
49 incurred under the Act while the bond is in force and cover
50 payments which ~~which~~ **that** become due while the bond is in force which
51 ~~which~~ **that** are attributable to injuries incurred in prior periods and
52 which ~~which~~ **that** are otherwise unsecured by cash, irrevocable letters

2 of credit or acceptable securities. A bond shall must be held
4 until all payments secured thereby have been made or until it has
6 been replaced by a bond, issued by a qualified successor surety
8 which, that covers all outstanding liabilities. Payments under
10 the bond shall--be are due within 30 days after notice has been
12 given to the surety by the chair of the commission that the
14 principal has failed to make a payment required under the terms
16 of an award, agreement or governing law. A surety bond shall may
18 not be used to fund a trust established to satisfy the
20 requirements of this section.

22 As an alternative to the method described in the first paragraph
24 of this subsection, an eligible employer may establish an
26 actuarially fully funded trust, funded at a level sufficient to
28 discharge those obligations incurred by the employer pursuant to
30 this Act as they become due and payable from time to time,
32 provided that the value of trust assets shall--be are at least
34 equal to the present value of ultimate expected incurred claims
36 and claims settlement costs. The trust assets shall consist of
38 cash or marketable securities of a type and risk character as
40 specified in subsection 7, and shall have a situs in the United
42 States. The trustee shall submit a report to the superintendent,
44 not less frequently than quarterly which, that lists the assets
46 comprising the corpus of the trust, including a statement of
48 their market value and the investment activity during the period
50 covered by the report. The trust shall must be established and
52 maintained subject to the condition that trust assets cannot may
not be transferred or revert in any manner to the employer except
to the extent that the superintendent finds that the value of the
trust assets exceeds the present value of incurred claims and
claims settlement costs with an actuarially indicated margin for
future loss development. In all other respects, the trust
instrument, including terms for certification, funding,
designation of trustee and pay out shall, must be as approved by
the superintendent; provided, that the value of the trust account
shall--be is actuarially calculated at least annually by a
casualty actuary who is a member of the American Academy of
Actuaries and is adjusted to the required level of funding. For
purposes of this paragraph, an "eligible employer" is one who is
found by the superintendent to be capable of paying compensation
and benefits required by this Act and:

42 A. Has positive net earnings; or

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

48 Notwithstanding any provision of this section--or chapter, any
50 bond or security deposit required of a public employer which that
52 is a self-insurer shall may not exceed \$50,000, provided that
such the public employer has a state-assessed valuation equal to
or in excess of \$300,000,000 and either a bond rating equal to or

2 in excess of the 2nd highest standard as set by a national bond
3 rating agency or a net worth equal to or in excess of
4 \$25,000,000. If a county, city or town relies upon a bond
5 rating, it shall value or cause to be valued its unpaid workers'
6 compensation claims pursuant to sound accepted actuarial
7 principles. This value shall must be incorporated in the annual
8 audit of the county, city or town, together with disclosure of
9 funds appropriated to discharge incurred claims expenses. "Public
10 employer" includes the State, the University of Maine System,
11 counties, cities and towns.

12 In consideration of a self-insuring entity's application for
13 authorization to operate a plan of self-insurance, the
14 superintendent may require or permit an applicant to employ valid
15 risk transfer by the utilization of primary excess insurance,
16 subject to the provisions of subsection 6. Standards respecting
17 the application of primary excess insurance shall must be
18 contained in a ~~regulation--promulgated~~ rule adopted by the
19 superintendent pursuant to the Maine Administrative Procedure
20 Act, Title 5, chapter 375. Primary excess insurance shall ~~be~~ is
21 defined as insurance covering workers' compensation exposures in
22 excess of risk retained by a self-insurer.

24 As a further alternative to the methods described in this
25 subsection, an employer shall ~~be~~ is eligible for approved
26 self-insurance status pursuant to this Act if the employer
27 submits a written guarantee of the obligations incurred pursuant
28 to this Act, the guarantee to be issued by a United States or
29 Canadian corporation which that is a member of an affiliated
30 group of which the employer is a member, and ~~which corporation~~ is
31 solvent and demonstrates an ability to pay the compensation and
32 benefits, and the guarantee is in a form acceptable to the
33 superintendent. The guarantor shall provide quarterly financial
34 statements, audited annual financial statements and such other
35 information as the superintendent may require, and the employer
36 shall provide a bond as otherwise required by this Act in an
37 amount not less than \$1,000,000. Any such guarantor shall ~~be~~ is
38 deemed to have submitted to the jurisdiction of the Workers'
39 Compensation Commission and the courts of this State for purposes
40 of enforcing any such guarantee. The guarantor, in all respects,
41 shall ~~be~~ is bound by and subject to the orders, findings,
42 decisions or awards rendered against the employer for payment of
43 compensation and any penalties or forfeitures provided under this
44 Act. The superintendent, following hearing, may revoke the
45 self-insured status of the employer if at any time the assets of
46 the guarantor become impaired, encumbered or are otherwise found
47 to be inadequate to support the guarantee.

48 Notwithstanding any other provisions of this section, a
49 self-insuring entity may, with the approval of the
50 superintendent, use a combination of financial assets including
51 cash deposits, securities, irrevocable letters of credit, surety
52

2 bonds or fully or partially funded trusts to satisfy the solvency
3 and ability to pay requirements of this section.

4 **Sec. 2. 39 MRSA §23, sub-§7,** as amended by PL 1989, c. 435,
5 **§10,** is further amended to read:

6
7. **Acceptable deposit funds or surety bonds; letters of**
8 **credit.** In addition to cash, the deposit funds acceptable to the
9 superintendent as a security deposit shall include United States
10 Government bonds, notes or bills, issued or guaranteed by the
11 United States of America; bonds secured by the full faith, credit
12 and taxing power of political subdivisions of the United States
13 rated in the 3 highest grades by a national rating agency such as
14 Moody's, Standard and Poor's or Fitch, as of the foregoing year
15 end; money market funds which are invested only in United States
16 Government or government agency obligations with a maturity not
17 exceeding one year; high grade commercial paper rated as either
18 A-1 or P-1 by a nationally recognized bond rating service such as
19 Moody's, Standard and Poor's or Fitch, or money market funds
20 invested in such paper; certificates of deposit issued by a duly
21 chartered commercial bank or thrift institution in the State
22 which is protected by the Federal Deposit Insurance Corporation,
23 and if such a bank or institution possesses assets of at least
24 \$100,000,000 and maintains a ratio of capital to assets equal to
25 or greater than 6 1/2%; savings certificates issued by any
26 savings and loan association in the State which are protected by
27 the Federal Savings and Loan Insurance Corporation, and if such
28 an association possesses assets of at least \$100,000,000 and
29 maintains a ratio of capital to assets equal to or greater than 6
30 1/2%; surety bonds in a form prescribed by the superintendent
31 which are issued by any corporate surety which that meets the
32 qualifications prescribed by rule of the superintendent, and such
33 other investments approved by the superintendent; and an
34 irrevocable letter of credit issued to the Treasurer of the State
35 by a financial institution authorized to do business in this
36 State, as defined in Title 9-B, section 131, subsection 17-A,
37 having capital, undivided surplus and retained earnings of not
38 less than \$50,000,000. The irrevocable letter of credit binds
39 the financial institution to pay one or more drafts drawn by the
40 Treasurer of State if accompanied by either of the following
41 documents, as long as the drafts do not exceed the total amount
42 of the irrevocable letter of credit:

44 A. A certificate signed by the Chair of the Workers'
45 Compensation Commission stating that amounts are required to
46 be paid by the employer under this Title, the dollar amount
47 required to be paid and the payee to whom those amounts are
48 due; or

49 B. A certificate signed by the Superintendent of Insurance
50 stating that the irrevocable letter of credit in question
51 expires by its terms in 30 days or less and that it has not
52

2 been replaced by a substitute irrevocable letter of credit
4 having an expiration date at least 12 months subsequent to
6 the expiration of the existing irrevocable letter of credit,
8 and that the full amount of the existing letter of credit,
10 less any amounts previously drawn, must be paid to the
12 Treasurer of State.

14 If the chair issues a certificate under paragraph A, the
16 Treasurer of State shall draw a draft on the letter of credit
18 payable in accordance with the instructions of the chair. If the
20 Superintendent of Insurance issues a certificate under paragraph
22 B, the Treasurer of State shall draw a draft in the full amount
24 of the letter of credit and shall hold the proceeds for and on
26 behalf of the State until the superintendent either: certifies to
28 the Treasurer of State that replacement security in compliance
30 with this Title has been provided, in which case the proceeds
32 must be returned to the employer; or directs the payment of the
34 proceeds in accordance with this Title.

STATEMENT OF FACT

36 The bill expands the financial options of self-insurers for
38 providing security to pay workers' compensation benefits by
authorizing the use of irrevocable letters of credit. Currently,
self-insurers may use cash, securities, guarantees by parent
companies, surety bonds and fully funded trusts to back up claims
incurred by their employees. The bill allows self-insurers some
flexibility in responding to changes in financial and insurance
markets, thereby reducing the cost of providing security and,
because of that, the cost of workers' compensation.

The letter of credit must be irrevocable and contain no
conditions preventing the Treasurer of State from drawing on the
letter of credit if appropriately requested by the Chair of the
Workers' Compensation Commission or the Superintendent of
Insurance.