

MAINE STATE LEGISLATURE

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115th MAINE LEGISLATURE

FIRST REGULAR SESSION-1991

Legislative Document

No. 1528

S.P. 574

In Senate, April 16, 1991

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

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator MILLS of Oxford
Cosponsored by Representative MITCHELL of Vassalboro.

STATE OF MAINE

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

**An Act to Enhance the Availability of Group and Individual
Self-insurance Information and to Prevent Conflicts of Interest under the
Workers' Compensation Act.**

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

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

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

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

48 As an alternative to the method described in the first paragraph
of this subsection, an eligible employer may establish an
50 actuarially fully funded trust, funded at a level sufficient to
discharge those obligations incurred by the employer pursuant to
52 this Act as they become due and payable from time to time,

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

26
28 A. Has positive net earnings; or

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

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

48 In consideration of a self-insuring entity's application for
authorization to operate a plan of self-insurance, the
50 superintendent chair may require or permit an applicant to employ
valid risk transfer by the utilization of primary excess
52 insurance, subject to the provisions of subsection 6. Standards

2 respecting the application of primary excess insurance shall must
3 be contained in a regulation promulgated by the superintendent
4 chair pursuant to the Maine Administrative Procedure Act, Title
5, chapter 375. Primary excess insurance shall--be is defined as
6 insurance covering workers' compensation exposures in excess of
risk retained by a self-insurer.

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

32
33 **Sec. 2. 39 MRSA §23, sub-§10, as repealed and replaced by PL**
34 **1983, c. 132, is amended to read:**

35
36 **10. Confidentiality of information.** All written, printed
37 or graphic matter or any mechanical or electronic data
38 compilation from which information can be obtained, directly or
39 after translation into a form susceptible of visual or aural
40 comprehension, all information contained in the minutes of
41 trustee meetings and all information relating to individual
42 compensation cases, which a self-insurer is required to file with
43 or make available to the superintendent Chair of the Workers'
44 Compensation Commission under this section, section 23-A or
45 regulations adopted in relation thereto, shall---be are
46 confidential and do not constitute public records.

47
48 The confidential nature of any such information shall may not
49 limit or affect its use by the superintendent chair in
50 administering this Act, including, but not limited to,
51 communications with the service agent, the Workers' Compensation
52 Commission or the Maine Self-Insurance Guarantee Association.

2 Representatives of employees, including labor unions representing
4 employees, and the affected employer must have access to
6 materials regarding the self-insured status of the employer and
8 the employer's individual and group self-insurers, except as that
10 information affects particular details concerning individual
12 pending compensation cases.

STATEMENT OF FACT

14 This bill increases the availability of self-insurance on
16 both an individual and group basis. Self-insurers obtain
18 insurance at vastly reduced costs and often the service provided
20 injured workers in terms of immediate payment of benefits is
22 significantly better than that provided by many insurers.
24 Because the Chair of the Workers' Compensation Commission has no
regulatory ties with the workers' compensation insurers and is
more familiar with the administration of the workers'
compensation laws, this bill gives the authority for approval for
self-insurance, both individual and group, to the Chair of the
Workers' Compensation Commission.

26 This bill also provides that the employees' representatives
28 or the union representing the involved workers may be given
access to information concerning self-insurance which is vital to
the workers' protection.