

# MAINE STATE LEGISLATURE

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STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
115TH LEGISLATURE  
SECOND REGULAR SESSION

HOUSE AMENDMENT "A" to COMMITTEE AMENDMENT "A" to S.P. 877,  
L.D. 2238, Bill, "An Act to Facilitate Self-insurance and Group  
Self-insurance under the Maine Workers' Compensation Act"

Amend the amendment by inserting after the first indented  
paragraph the following:

Sec. 1. 24-A MRSA §707, sub-§1, ¶C, as amended by PL 1991, c.  
385, §5, is further amended to read:

C. Workers' compensation and employer's liability.  
Insurance, whether written on a primary or excess basis, of  
the obligations accepted by, imposed upon or assumed by  
employers under law for death, disablement or injury of  
employees;

Sec. 2. 24-A MRSA §707, sub-§1, ¶C-1, as enacted by PL 1991, c.  
385, §5, is amended to read:

C-1. Employee benefit excess insurance. Insurance,  
protecting an employer against higher than expected  
obligations under an employee benefit plan, at retention  
levels that do not have the effect of making the plan an  
insured plan. Reinsurance provided to employers that  
self-insure their workers' compensation exposures pursuant  
to Title 39, section 23 does not constitute employee benefit  
excess insurance. The transaction of employee benefit  
excess insurance does not constitute the conduct of the  
business of reinsurance;

Further amend the amendment in section 1 in subsection 2 in  
the 10th paragraph in the 12th line (page 5, line 10 in  
amendment) by striking out the following: "excess insurance" and  
inserting in its place the following: 'excess---insuranc  
reinsurance'

2 Further amend the amendment in section 1 in subsection 2 in  
the 3rd paragraph from the end in the 4th line (page 6, line 17  
4 in amendment) by striking out the following: "excess insurance"  
and inserting in its place the following: '~~excess--insurance~~  
reinsurance'

6  
8 Further amend the amendment in section 1 in subsection 2 in  
the 3rd paragraph from the end in the 6th line (page 6, line 19  
10 in amendment) by striking out the following: "primary excess  
insurance" and inserting in its place the following: '~~primary~~  
~~excess--insurance~~ reinsurance'

12  
14 Further amend the amendment in section 1 in subsection 2 in  
the 3rd paragraph from the end in the 9th line (page 6, line 22  
16 in amendment) by striking out the following: "Primary excess  
insurance" and inserting in its place the following: '~~Primary~~  
~~excess--insurance~~ Reinsurance'

18  
20 Further amend the amendment by inserting after section 3 the  
following:

22 'Sec. 4. 39 MRSA §23, sub-§2-A, as amended by PL 1989, c. 435,  
24 §§3, 4 and 5, is further amended by amending the 2nd paragraph to  
read:

26 If, upon examination of the sworn financial statement and other  
28 data submitted, the superintendent is satisfied as to the ability  
of the employer or group to make current compensation payments  
30 and that the employer's or group's tangible assets make  
reasonably certain the payment of all obligations that may arise  
32 under the Workers' Compensation Act, the application shall must  
be granted subject to the terms and conditions setting out the  
34 exposure of cash deposits or securities or an acceptable surety  
bond, all as required by the superintendent. Security against  
36 shock or catastrophe loss shall must be provided either by  
depositing securities with the Workers' Compensation Commission  
38 in such amount as the superintendent may determine, or by filing  
with the superintendent and the Workers' Compensation Commission  
40 an insurance carrier's certificate of a standard self-insurer's  
~~primary-excess~~ reinsurance contract issued to the self-insurer or  
42 group in form approved by the superintendent, providing coverage  
against losses arising out of one injury in such amounts as the  
44 superintendent may determine, or a combination of the foregoing,  
satisfactory to the superintendent. Notwithstanding any  
46 provision of this section or chapter, no specific or aggregate  
~~excess--insurance~~ reinsurance may be required of any individual  
48 public employer who is self-insured and has a state-assessed  
valuation equal to or in excess of \$300,000,000 and either a net

2 worth equal to or in excess of \$25,000,000 or has a bond rating  
equal to or in excess of the 2nd highest standard as set by a  
4 national bond rating organization, provided that if the  
self-insurer relying on a bond rating is a county, city or town  
6 it shall value or cause to be valued its unpaid workers'  
compensation claims pursuant to sound accepted actuarial  
8 principles. This value shall must be incorporated in the annual  
audit of the county, city or town together with disclosure of  
funds appropriated to discharge incurred claims expenses.

10 Sec. 5. 39 MRSA §23, sub-§4, ¶¶M and N, as enacted by PL 1985,  
12 c. 219, are amended to read:

14 M. In any fiscal year, ~~ne a~~ group self-insurer may not be  
required to obtain aggregate ~~excess--insurance~~ reinsurance  
16 with a policy limit that exceeds a multiple of 1.5 of its  
annual standard workers' compensation premium for that  
18 fiscal year. The superintendent may set lower policy limits  
for aggregate ~~excess--insurance~~ reinsurance where, in ~~his~~ the  
20 superintendent's judgment, lower limits may be prudent.

22 N. Upon approval by the superintendent, a group  
self-insurer may dedicate a portion of its unimpaired  
24 surplus to increase its self-insured retention level under  
the aggregate ~~excess--insurance~~ reinsurance policy by an  
26 amount equal to the amount of surplus so dedicated. The  
superintendent before granting ~~his~~ approval shall consider  
28 among other factors:

30 (1) The level of alternate revenues available to the  
group self-insurer to cover the further assumed costs;  
32 and

34 (2) The adequacy of the fund's surplus to meet  
obligations of the group self-insurer.

36 At the expiration of a period of 10 calendar days after the  
38 superintendent has received a plan for the dedication of a  
portion of the unimpaired surplus of a group self-insurer to  
40 increase its self-insured retention level and any additional  
information the superintendent has deemed determined  
42 necessary, the plan shall must be deemed approved unless  
prior to the expiration of that time period it has been  
44 affirmatively approved or disapproved by the superintendent.

46 Sec. 6. 39 MRSA §23, sub-§4-A, ¶¶A and D, as enacted by PL  
1989, c. 435, §8, are amended to read:

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

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

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

26 (3) Fraud or misrepresentation in the application; or

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

30 D. When a self-insurer's ~~excess~~ reinsurance contract  
32 expires on a date other than the renewal date for its  
self-insurance approval, the self-insurer shall file  
34 evidence of any required ~~excess~~ reinsurance coverage no  
later than 3 working days before the date of expiration of  
36 its coverage.

38 Sec. 7. 39 MRSA §23, sub-§6, as enacted by PL 1989, c. 435,  
§9, is amended by amending the first paragraph to read:

40 6. Security deposit and reinsurance requirements for  
42 individual self-insurers. The following security deposit and  
~~excess--insurance~~ reinsurance requirements apply to individual  
44 self-insurers.

46 Sec. 8. 39 MRSA §23, sub-§6, ¶B, as enacted by PL 1981, c.  
48 484, §7, is amended to read:

2 B. All individual self-insurers shall maintain specific  
excess-insurance reinsurance unless the superintendent, in  
4 his the superintendent's discretion, waives such a  
requirement. Specific ~~excess--insurance--shall~~ reinsurance  
6 must generally have a limit of at least \$2,000,000. Higher  
limits may be required for those businesses with a high risk  
8 of multiple injury from a single occurrence. The retention  
underlying specific ~~excess~~ reinsurance policies shall must  
10 be the lowest retention generally available for businesses  
of similar size and exposure, but may, at the  
12 superintendent's discretion, be established at higher levels  
consistent with the employer's claims experience and  
14 financial condition.

16 All individual self-insurers shall maintain aggregate ~~excess~~  
~~insurance~~ reinsurance unless the superintendent, in his the  
superintendent's discretion, waives such requirements.

18 **Sec. 9. 39 MRSA §23, sub-§6, ¶C,** as enacted by PL 1989, c.  
20 435, §9, is amended to read:

22 C. The superintendent may adopt rules establishing specific  
requirements applicable to security deposits and ~~excess~~  
24 ~~insurance~~ reinsurance, including, but not limited to,  
provisions governing standards for waiver of ~~excess~~  
26 ~~insurance~~ reinsurance, use of trusts in lieu of security  
deposits and release or application of deposit funds.

28 **Sec. 10. 39 MRSA §23, sub-§7-A,** as amended by PL 1989, c. 435,  
30 §11, is further amended to read:

32 **7-A. Form of reinsurance contracts.** All ~~primary--excess~~  
~~insurance~~ reinsurance contracts issued or renewed after the  
34 effective date of this subsection shall must be issued by  
companies that meet the requirements of subsection 8 and shall  
36 must name the self-insurer and the Maine Self-Insurance Guarantee  
Association as coinsureds to the extent of their respective  
38 interests. These ~~excess~~ reinsurance contracts shall must  
recognize the Maine Self-Insurance Guarantee Association's rights  
40 of recovery, within the terms of coverage provided by the  
contract, for payments made by the association to or on behalf of  
42 claimants regarding covered claims and for claims in the course  
of settlement, the value of which when reduced to payments will  
44 create an obligation on the part of the ~~excess~~ reinsurance  
carrier to reimburse the association to the extent of funds  
46 disbursed by the association to discharge covered claims. The  
requirements of this subsection shall apply to any ~~excess~~  
48 reinsurance contract issued to any individual or group

2 self-insurer as part of a self-insurance program approved for use  
3 within this State and shall--be are in addition to any other  
4 requirement applicable to ~~excess~~ reinsurance contracts imposed by  
5 law or rule.

6 ~~Excess-insurance~~ Reinsurance contracts shall ~~must~~ further specify  
7 that the ~~excess~~ reinsurance carrier and the Maine Self-Insurance  
8 Guarantee Association may enter into agreements on the terms of  
9 settlement and distribution of benefits accruing to claimants  
10 within the limits of the authority of the parties to make  
11 settlements with respect to any coverage year.

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

22  
23 **Sec. 11. 39 MRSA §23, sub-§8, as amended by PL 1989, c. 435,**  
24 **§12, is further amended to read:**

25  
26 **8. Qualifications for reinsurance carriers.** No A workers'  
27 compensation contract or policy issued after the effective date  
28 of this section may not be recognized by the superintendent in  
29 considering the ability of an individual or group self-insurer to  
30 fulfill its financial obligations under this Act, unless the  
31 contract or policy is issued by an admitted insurance company or  
32 a reinsurance company that meets on a continuous basis the  
33 requirements of Title 24-A, chapter 9, subchapter III and the  
34 reinsurance company has been approved by the Superintendent of  
35 Insurance to issue in this State contracts of primary workers'  
36 compensation reinsurance, or by Lloyd's of London, a syndicate of  
37 unincorporated alien insurers which that has established and  
38 maintains United States trust funds consistent with the  
39 requirements of Title 24-A, section-731,--paragraph-C chapter 9,  
40 subchapter III. Each contract of primary workers' compensation  
41 reinsurance that is proposed for use in this State must be filed  
42 for approval in the manner set out in Title 24-A, section 2412.  
43 Insofar as is practicable, a contract so approved may be modified  
44 with less than 30 days advance filing notice if the  
45 superintendent determines the modifications suggested are not  
46 contrary to provisions of Title 24-A, section 2412, this Title or  
Bureau of Insurance Rule Chapter 250 and are necessary to effect

2 required reinsurance coverage to authorize the self-insurer to  
3 operate a plan of workers' compensation self-insurance.'

4 Further amend the amendment by inserting after section 4 the  
5 following:

6 'Sec. 5. Transition provision. The provisions of the Bureau of  
7 Insurance Rule Chapter 250 governing primary excess insurance  
8 apply to reinsurance contracts required or provided under this  
9 Act until the Bureau of Insurance has adopted conforming  
10 amendments to Chapter 250.'

11 Further amend the amendment by renumbering the sections to  
12 read consecutively.

### 16 STATEMENT OF FACT

17 This amendment reclassifies primary excess workers'  
18 compensation insurance to workers' compensation reinsurance to  
19 permit the transfer of a self-insured employer's workers'  
20 compensation obligations to reinsurance companies.  
21

24

25 Filed by Rep. Mitchell of Vassalboro  
26 Reproduced and distributed under the direction of the Clerk of the  
27 House  
28 3/24/92 (Filing No. H-1214)