

MAINE STATE LEGISLATURE

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R. of S.

L.D. 2238

(Filing No. S-701)

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STATE OF MAINE
SENATE
115TH LEGISLATURE
SECOND REGULAR SESSION

SENATE AMENDMENT "B" 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---insurance reinsurance'

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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 1 the
following:

22 'Sec. 2. 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

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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. 3. 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, ~~no~~ 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. 4. 39 MRSA §23, sub-§4-A, ¶¶A and D**, as enacted by PL
1989, c. 435, §8, are amended to read:

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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. 5. 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 Further amend the amendment by inserting after section 2 the
following:

48 **'Sec. 3. 39 MRSA §23, sub-§6, ¶B**, as enacted by PL 1981, c.
50 484, §7, is amended to read:

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

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

18 **Sec. 4. 39 MRSA §23, sub-§6, ¶C**, as enacted by PL 1989, c.
19 435, §9, is amended to read:

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

26 Further amend the amendment by inserting after section 3 the
27 following:

28 **Sec. 4. 39 MRSA §23, sub-§7-A**, as amended by PL 1989, c. 435,
29 §11, is further amended to read:

30 **7-A. Form of reinsurance contracts.** All ~~primary--excess~~
31 ~~insurance~~ reinsurance contracts issued or renewed after the
32 effective date of this subsection shall must be issued by
33 companies that meet the requirements of subsection 8 and shall
34 must name the self-insurer and the Maine Self-Insurance Guarantee
35 Association as coinsureds to the extent of their respective
36 interests. These ~~excess~~ reinsurance contracts shall must
37 recognize the Maine Self-Insurance Guarantee Association's rights
38 of recovery, within the terms of coverage provided by the
39 contract, for payments made by the association to or on behalf of
40 claimants regarding covered claims and for claims in the course
41 of settlement, the value of which when reduced to payments will
42 create an obligation on the part of the ~~excess~~ reinsurance
43 carrier to reimburse the association to the extent of funds
44 disbursed by the association to discharge covered claims. The
45 requirements of this subsection shall apply to any ~~excess~~
46 reinsurance contract issued to any individual or group

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

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

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

22 **Sec. 5. 39 MRSA §23, sub-§8,** as amended by PL 1989, c. 435,
24 §12, is further amended to read:

26 **8. Qualifications for reinsurance carriers.** No A workers'
28 compensation contract or policy issued after the effective date
of this section may not be recognized by the superintendent in
30 considering the ability of an individual or group self-insurer to
fulfill its financial obligations under this Act, unless the
32 contract or policy is issued by an admitted insurance company or
a reinsurance company that meets on a continuous basis the
34 requirements of Title 24-A, chapter 9, subchapter III and the
reinsurance company has been approved by the Superintendent of
36 Insurance to issue in this State contracts of primary workers'
compensation reinsurance, or by Lloyd's of London, a syndicate of
38 unincorporated alien insurers which that has established and
maintains United States trust funds consistent with the
requirements of Title 24-A, ~~section 731, paragraph C~~ chapter 9,
40 subchapter III. Each contract of primary workers' compensation
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.
Insofar as is practicable, a contract so approved may be modified
44 with less than 30 days advance filing notice if the
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

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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.

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15 **STATEMENT OF FACT**

16
17 This amendment is offered on behalf of the Committee on
18 Engrossed Bills to correct technical errors. This amendment is
19 substantively the same as House Amendment "A" to Committee
20 Amendment "A" (H-1214).
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24
25 (Senator VOSE) Henry S. Vose
26 SPONSORED BY:

27 COUNTY: Washington

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30
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