

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)



# 115th MAINE LEGISLATURE

## SECOND REGULAR SESSION-1992

Legislative Document

No. 2238

S.P. 877

In Senate, January 28, 1992

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 26.  
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

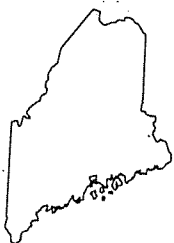
Presented by Senator CONLEY of Cumberland  
Cosponsored by Senator KANY of Kennebec and Representative MITCHELL of Vassalboro.

STATE OF MAINE

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

An Act to Facilitate Self-insurance and Group Self-insurance under the  
Maine Workers' Compensation Act.

Printed on recycled paper



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

2           **Sec. 1. 26 MRSA §42-A, sub-§2, ¶E-2**, as enacted by PL 1991, c.  
4 615, Pt. A, §19, is amended to read:

6           E-2. The support for the development of long-term  
8 strategies to improve occupational health and safety  
professional education and resources. The department may  
award contracts to public and private nonprofit  
10 organizations as seed money to develop programs that will  
serve this purpose and that will develop other funding  
12 sources in the future; and

14           **Sec. 2. 26 MRSA §42-A, sub-§2, ¶E-3** is enacted to read:

16           E-3. Grants for employers forming a group for  
18 self-insurance for workers' compensation purposes under  
Title 39, section 23-B; and

20           **Sec. 3. 39 MRSA §23, sub-§2**, as amended by PL 1991, c. 615,  
22 Pt. A, §24, is further amended to read:

24           **2. Proof of solvency and financial ability to pay; trust.**

By furnishing satisfactory proof to the Superintendent of  
Insurance of solvency and financial ability to pay the  
26 compensation and benefits, and deposit cash, satisfactory  
securities, irrevocable standby letters of credit issued by a  
28 qualified financial institution or a surety bond, with the  
Workers' Compensation Commission, in such sum as the  
30 superintendent may determine pursuant to subsection 6; such bond  
to run to the Treasurer of State and the Treasurer of State's  
32 successor in office, and to be conditional upon the faithful  
performance of this Act relating to the payment of compensation  
34 and benefits to any injured employee. In case of cash or  
securities being deposited, the cash or securities must be placed  
36 in an account at interest by the Treasurer of State, and the  
accumulation of interest on the cash or securities so deposited  
38 must be credited to the account and may not be paid to the  
employer to the extent that the interest is required to support  
40 any present value discounting in the determination of the amount  
of the deposit. Any security deposit must be held by the  
42 Treasurer of State in trust for the benefit of the self-insurer's  
employees for the purposes of making payments under the Act.

44  
46           The superintendent shall adopt rules to establish the  
48 qualifications for financial institutions issuing irrevocable  
standby letters of credit, which must include maintenance of a  
long-term unsecured debt rating of at least A by either Moody's  
50 Investors Service, Inc. or Standard and Poor's Corporation, and

2 to prescribe the form of the irrevocable standby letter of credit  
3 that may be used to satisfy, in whole or in part, the employer's  
4 responsibility under this subsection to post security. The  
5 irrevocable standby letter of credit must be the individual  
6 obligation of the issuing financial institution, may not be  
7 subject to any agreement, condition or qualification between the  
8 financial institution and the employer and may not in any way be  
9 contingent on reimbursement by the employer. If the rating of an  
10 issuing financial institution that has issued an irrevocable  
11 standby letter of credit pursuant to this subchapter falls below  
12 the required standard, the employer must obtain a new irrevocable  
13 standby letter of credit from a qualified financial institution  
14 or must provide substitute proof of solvency and financial  
15 ability to pay consistent with this section. The irrevocable  
16 standby letter of credit is automatically extended for one year  
17 from the date of expiration unless, 90 days prior to any  
18 expiration date, the issuing financial institution notifies the  
19 Superintendent of Insurance that the financial institution elects  
20 not to renew the irrevocable standby letter of credit. The  
21 Superintendent of Insurance shall consider the following form of  
22 letter acceptable.

23 IRREVOCABLE STANDBY LETTER OF CREDIT

24 Irrevocable standby letter of credit no. ....

25 We hereby issue our irrevocable standby letter of credit  
26 (hereinafter referred to as "letter of credit") in favor of  
27 the Treasurer of State, State of Maine for drawings up to  
28 U.S. \$..... effective immediately and expiring  
29 immediately at our .....(bank address)..... with our close  
30 of business on .....

31 We hereby undertake to honor promptly your sight draft(s)  
32 drawn on us, indicating our letter of credit no. ....  
33 for all or part of this letter of credit if presented at  
34 .....(bank address)..... on or before the expiration date  
35 or any automatically extended date.

36 Except as stated in this letter of credit, this undertaking  
37 is not subject to any condition or qualification. The  
38 obligation of the bank under this letter of credit is the  
39 individual obligation of the bank, in no way contingent upon  
40 reimbursement with respect thereto.

41 It is a condition of this letter of credit that it is  
42 automatically extended without amendment for one year from  
43 the expiration of this letter of credit, or any future  
44 expiration date, unless 90 days prior to any expiration date  
45 we notify the chair of the Workers' Compensation Commission

2 and the Superintendent of Insurance by registered mail that  
3 we elect not to consider this letter of credit renewed for  
4 any additional period.

6 It is a further condition of this letter of credit that any  
7 interruptions of the bank's conduct of business caused by an  
8 Act of God, riot, civil commotion, insurrection, war or  
9 other cause beyond the bank's control will automatically  
10 extend the expiration date of the letter of credit, as well  
11 as any future expiration date, by the period of the  
12 interruption.

14 To the extent not inconsistent with Maine law, this letter  
15 of credit is subject to and governed by the Uniform Customs  
16 and Practice for Documentary Credits, 1983, International  
17 Chamber of Commerce Publication No. 400. If any legal  
18 proceedings are initiated with respect to payment of this  
19 letter of credit, it is agreed that such proceedings are  
20 subject to Maine courts and law.

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

42 As an alternative to the method described in the first paragraph  
43 of this subsection, an eligible employer may establish an  
44 actuarially fully funded trust, funded at a level sufficient to  
45 discharge those obligations incurred by the employer pursuant to  
46 this Act as they become due and payable from time to time,  
47 provided that the superintendent requires that the value of trust  
48 assets be at least equal to the present value of ultimate  
49 expected incurred claims and claims settlement costs. The  
50 present value of ultimate expected incurred claims and claims  
settlement costs for a group self-insurer may not be more than

2 the amount actuarially determined considering the value of trust  
3 assets and excess insurance to satisfy a 90% confidence level. A  
4 group self-insurer may elect to fund at a higher confidence level  
5 through the use of cash, marketable securities, surety bonds,  
6 irrevocable standby letters of credit or excess insurance. If a  
7 member of a group self-insurer terminates its membership in the  
8 group for any reason, then that member shall fund its  
9 proportionate share of the liabilities and obligations of the  
10 trust to the 95% confidence level. If for any reason the  
11 departing member fails to fund its proportionate share of the  
12 trust's exposure to the 95% level of confidence, then the  
13 remaining members of the group shall make such additional  
14 contribution no later than the anniversary date of the program as  
15 required to fund the departing member's exposure in accordance  
16 with this provision. Trust assets must consist of cash or  
17 marketable securities of a type and risk character as specified  
18 in subsection 7 and have a situs in the United States. The  
19 trustee shall submit a report to the superintendent not less  
20 frequently than quarterly that lists the assets comprising the  
21 corpus of the trust, including a statement of their market value  
22 and the investment activity during the period covered by the  
23 report. The trust must be established and maintained subject to  
24 the condition that trust assets may not be transferred or revert  
25 in any manner to the employer except to the extent that the  
26 superintendent finds that the value of the trust assets exceeds  
27 the present value of incurred claims and claims settlement costs  
28 with an actuarially indicated margin for future loss  
29 development. In all other respects, the trust instrument,  
30 including terms for certification, funding, designation of  
31 trustee and pay out, must be as approved by the superintendent;  
32 provided that the value of the trust account must be actuarially  
33 calculated at least annually by a casualty actuary who is a  
34 member of the American Academy of Actuaries and adjusted to the  
35 required level of funding. For purposes of this paragraph, an  
36 "eligible employer" is one who is found by the superintendent to  
37 be capable of paying compensation and benefits required by this  
38 Act and:

- 39 A. Has positive net earnings; or
- 40 B. Can demonstrate a level of working capital adequate in
- 41 relation to its operating needs.
- 42

43 Notwithstanding any provision of this section or chapter, any  
44 bond or security deposit required of a public employer that is a  
45 self-insurer may not exceed \$50,000, provided that such public  
46 employer has a state-assessed valuation equal to or in excess of  
47 \$300,000,000 and either a bond rating equal to or in excess of  
48 the 2nd highest standard as set by a national bond rating agency  
49 or a net worth equal to or in excess of \$25,000,000. If a  
50

2 county, city or town relies upon a bond rating, it shall value or  
3 cause to be valued its unpaid workers' compensation claims  
4 pursuant to sound accepted actuarial principles. This value must  
5 be incorporated in the annual audit of the county, city or town  
6 together with disclosure of funds appropriated to discharge  
7 incurred claims expenses. "Public employer" includes the State,  
8 the University of Maine System, counties, cities and towns.

9  
10 In consideration of a self-insuring entity's application for  
11 authorization to operate a plan of self-insurance, the  
12 superintendent may require or permit an applicant to employ valid  
13 risk transfer by the utilization of primary excess insurance,  
14 subject to the provisions of subsection 6. Standards respecting  
15 the application of primary excess insurance must be contained in  
16 a ~~regulation--promulgated~~ rule adopted by the superintendent  
17 pursuant to the Maine Administrative Procedure Act, Title 5,  
18 chapter 375. Primary excess insurance must be defined as  
19 insurance covering workers' compensation exposures in excess of  
20 risk retained by a self-insurer.

21  
22 As a further alternative to the methods described in this  
23 subsection, an employer is eligible for approved self-insurance  
24 status pursuant to this Act if the employer submits a written  
25 guarantee of the obligations incurred pursuant to this Act, the  
26 guarantee to be issued by a United States or Canadian corporation  
27 that is a member of an affiliated group of which the employer is  
28 a member, and which corporation is solvent and demonstrates an  
29 ability to pay the compensation and benefits, and the guarantee  
30 is in a form acceptable to the superintendent. The guarantor  
31 shall provide quarterly financial statements, audited annual  
32 financial statements and such other information as the  
33 superintendent may require, and the employer shall provide a bond  
34 as otherwise required by this Act in an amount not less than  
35 \$1,000,000. Any such guarantor is deemed to have submitted to the  
36 jurisdiction of the Workers' Compensation Commission and the  
37 courts of this State for purposes of enforcing any such  
38 guarantee. The guarantor, in all respects, is bound by and  
39 subject to the orders, findings, decisions or awards rendered  
40 against the employer for payment of compensation and any  
41 penalties or forfeitures provided under this Act. The  
42 superintendent, following hearing, may revoke the self-insured  
43 status of the employer if at any time the assets of the guarantor  
44 become impaired, encumbered or are otherwise found to be  
inadequate to support the guarantee.

45 Notwithstanding any other provisions of this section, a  
46 self-insuring entity may, with the approval of the  
47 superintendent, use a combination of financial assets including  
48 cash deposits, securities, irrevocable standby letters of credit,

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

4 **Sec. 4. 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 Investors Service Inc., Standard and Poor's Corporation  
15 or Fitch, Investors Service Inc. as of the foregoing year-end  
16 year-end; money market funds which are invested only in United  
17 States Government or government agency obligations with a  
18 maturity not exceeding one year; high grade commercial paper  
19 rated as either A-1 or P-1 by a nationally recognized bond rating  
20 service such as Moody's Investors Service Inc., Standard and  
21 Poor's Corporation or Fitch Investors Service Inc., or money  
22 market funds invested in such paper; certificates of deposit  
23 issued by a duly chartered commercial bank or thrift institution  
24 in the State which is protected by the Federal Deposit Insurance  
25 ~~corporation~~, and Corporation if such a bank or institution  
26 possesses assets of at least \$100,000,000 and maintains a ratio  
27 of capital to assets equal to or greater than 6 1/2%; savings  
28 certificates issued by any savings and loan association in the  
29 State which are protected by the Federal Savings and Loan  
30 Insurance Corporation, and if such an association possesses  
31 assets of at least \$100,000,000 and maintains a ratio of capital  
32 to assets equal to or greater than 6 1/2%; surety bonds in a form  
33 prescribed by the superintendent which are issued by any  
34 corporate surety which that meets the qualifications prescribed  
35 by rule of the superintendent, and such other investments  
36 approved by the superintendent; and irrevocable standby letters  
37 of credit issued to the Treasurer of State by financial  
38 institutions with long-term unsecured debt ratings of at least A  
39 by either Moody's Investors Service, Inc. or Standard and Poor's  
40 Corporation or with commercial paper within the 3 highest  
41 short-term rating categories established by Moody's Investors  
42 Service Inc. or Standard and Poor's Corporation. An irrevocable  
43 standby letter of credit binds a financial institution to pay one  
44 or more drafts drawn by the Treasurer of State, as long as the  
45 draft does not exceed the total amount of the irrevocable standby  
46 letter of credit, if accompanied by the following document: a  
47 certificate signed by the Superintendent of Insurance stating  
48 that the irrevocable standby letter of credit in question expires  
49 by its terms in 30 days or less and that it has not been replaced  
50 by a substitute irrevocable standby letter of credit having an  
51 expiration date at least 12 months subsequent to the expiration  
52 of the existing irrevocable standby letter of credit, or cash



2 deposits, securities, surety bonds or trust funds or any  
3 combination thereof satisfying the requirements of this chapter  
4 and that the full amount of the existing irrevocable standby  
5 letter of credit less any amounts previously drawn must be paid  
6 to the Treasurer of State.

7 If the Superintendent of Insurance issues a certificate under  
8 this subsection, the Treasurer of State shall draw a draft in the  
9 full amount of the irrevocable standby letter of credit and shall  
10 hold the proceeds for and on behalf of the State until the  
11 superintendent either certifies to the Treasurer of State that  
12 replacement security in compliance with this Title has been  
13 provided, in which case the proceeds must be returned to the  
14 employer, or directs the payment of the proceeds in accordance  
15 with this Title.

16 **Sec. 5. 39 MRSA §23-B is enacted to read:**

17 **§23-B. Self-insurance grants**

18 Employers seeking to form a group self-insurance program are  
19 eligible to receive one grant from the Safety Education and  
20 Training Fund established in Title 26, section 61 that is  
21 equivalent to the value of the group members' annual pro rata  
22 assessments pursuant to Title 26, section 61. Each  
23 self-insurance group in existence on the effective date of this  
24 section is eligible for one grant from the Safety Education and  
25 Training Fund comparable to the value of the group's annual pro  
26 rata assessment for the year in which the grant is awarded. All  
27 grants awarded under this section may be used only for legal,  
28 accounting and actuarial services.

29 **Sec. 6. Requirements of the Bureau of Insurance.** The Bureau of  
30 Insurance shall perform the following responsibilities during the  
31 fiscal year 1992-93:

32 1. Inform each workers' compensation policyholder in  
33 writing of the option to self-insure individually or through a  
34 group plan;

35 2. Survey all workers' compensation policyholders to  
36 identify employers who may be interested in self-insurance and to  
37 secure preliminary data necessary to evaluate the suitability for  
38 self-insurance of the policyholder; and

39 3. Through bid processes retain legal, accounting and  
40 actuarial services necessary to perform the following tasks:

41 A. Create model plans of operation suitable for adoption by  
42 group self-insureds, accompanied by criteria by which to  
43

2 choose among the alternative approaches among the model  
plans;

4 B. Assist in the addition of employers to existing  
self-insured groups and in the formation of new self-insured  
6 groups through the following:

8 (1) Analysis of the survey conducted pursuant to  
subsection 2;

10 (2) Recommend categories of interested, qualified  
12 employers with the potential for self-insurance.  
Priority attention must be given to referring employers  
14 to existing groups that are seeking additional members  
and to groups of employers undertaking the formation of  
16 new groups;

18 (3) Assist potential self-insured groups in their  
initial organizational meetings, including among the  
20 agenda items nomination of an interim board of  
directors; approval of a minimum initial membership fee  
22 and adoption of a budget for financing start-up costs;

24 (4) Assist potential self-insured groups in applying  
to the Safety Education and Training Fund for grants  
26 pursuant to section 4 of this Act; and

28 (5) Assist potential self-insured groups in conducting  
bid processes to secure legal, accounting and actuarial  
30 services.

32 **STATEMENT OF FACT**

34 This bill allows self-insurers to secure their workers'  
36 compensation obligations through the use of irrevocable standby  
letters of credit issued by qualified financial institutions.  
38 This bill outlines a procedure designed to foster the formation  
of sufficient group self-insurance plans to ensure that all  
40 employers have access to workers' compensation insurance through  
self-insurance. Group self-insurance plans will be subject to  
42 all existing laws and regulations in this State.