

MAINE STATE LEGISLATURE

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117th MAINE LEGISLATURE

FIRST REGULAR SESSION-1995

Legislative Document

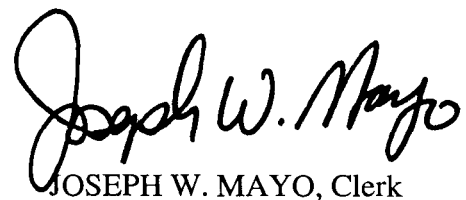
No. 307

H.P. 229

House of Representatives, January 27, 1995

An Act to Create the Competitive Workers' Compensation Fund.

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


JOSEPH W. MAYO, Clerk

Presented by Representative TUTTLE of Sanford.

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

Sec. 1. 24-A MRSA §401, as enacted by PL 1969, c. 132, §1, is amended to read:

§401. "Mutual" insurer defined

A "mutual" insurer is an incorporated insurer without permanent capital stock, and the governing body of which is elected by its policyholders or those policyholders specified in its charter, ~~or~~ by any reasonable combination of its policyholders, guaranty fund stockholders, ~~or~~ guaranty fund certificate holders, or by other reasonable method. The Competitive Workers' Compensation Fund created in Title 39-A is deemed to be a "mutual" insurer.

Sec. 2. 39-A MRSA §102, sub-§§14 and 19, as enacted by PL 1991, c. 885, Pt. A, §8 and affected by §§9 to 11, are amended to read:

14. Insurance company. "Insurance company" means any casualty insurance company or association authorized to do business in this State, including the Competitive Workers' Compensation Fund, that may issue policies conforming to subsection 19 and includes the Maine Employers' Mutual Insurance Company. Whenever in this Act relating to procedure the words "insurance company" or "insurer" are used they apply only to cases in which the employer has secured the payment of compensation and other benefits by insuring such payment under a workers' compensation insurance policy, instead of furnishing satisfactory proof of the employer's ability to pay compensation and benefits directly to the employer's employees.

An insurance carrier may not be qualified to issue a workers' compensation insurance policy covering any employees working in this State unless it has and continuously maintains an employee or claims agent within this State empowered to investigate claims arising under this chapter; sign agreements for the payment of compensation as provided by this chapter; and issue drafts or checks in payment of obligations arising under this chapter in amounts of at least \$1,000.

19. Workers' compensation insurance policy. "Workers' compensation insurance policy" means a policy in such form as the Superintendent of Insurance approves, issued by any stock or mutual casualty insurance company or association that may now or hereafter be authorized to do business in this State, or issued by the Competitive Workers' Compensation Fund, which in substance and effect guarantees the payment of the compensation, medical benefits and expenses of burial provided for, in such an

installment, at such the time or times, and to such the person or persons and upon such conditions as in this Act provided. Whenever a copy of a policy is filed, a copy certified by the Superintendent of Insurance is admissible as evidence in any legal proceeding wherein the original would be admissible.

Sec. 3. 39-A MRSA c. 11 is enacted to read:

CHAPTER 11

COMPETITIVE WORKERS' COMPENSATION FUND

§451. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Board. "Board" means the Board of Directors of the Competitive Workers' Compensation Fund.

2. Fund. "Fund" means the Competitive Workers' Compensation Fund created in section 452.

3. Manager. "Manager" means the Manager of the Competitive Workers' Compensation Fund.

§452. Creation; purpose; organization of fund

1. Fund created. The Competitive Workers' Compensation Fund is created as a nonprofit independent public corporation. The fund must be organized as a domestic mutual insurance company under Title 24-A.

2. Purpose. The fund is established for the purpose of providing workers' compensation insurance to employers of this State at the lowest possible cost and with the highest level of service that is consistent with reasonable actuarial principles and the financial integrity of the fund.

3. Board. The board consists of 7 members. The Commissioner of Labor and the manager shall serve as ex officio members.

A. The initial board is appointed by the Governor and consists of 7 members and the Commissioner of Labor. The Governor shall initially appoint one member for a one-year term, 2 members for 2-year terms, 2 members for 3-year terms and 2 members for 4-year terms. After the terms of the initial board members expire, the Governor shall appoint one

board member each year. The remaining 3 board members must be chosen by the fund's policyholders.

B. After the terms of the initial board members expire, each board member must represent a policyholder and may be an employee of a policyholder. At least 2 board members must represent private, for-profit enterprises. One of the 4 members appointed by the Governor must represent State Government. A member of the board may not represent or be an employee of an insurance company.

C. Except as provided for initial appointments, each board member shall hold office for a 4-year term or until a successor is appointed and qualified. A vacancy is filled for the remainder of the unexpired term in the same manner as each former board member was selected.

D. The board shall annually elect a chair from among its members and any other officers the board considers necessary for the performance of its duties.

E. Four members constitute a quorum of the board. Business may not be acted on without a quorum. All board decisions must be made by majority vote of the board. The board shall set its own compensation, which may not exceed \$50 per day and expenses. The board shall adopt bylaws and determine the time and place of regular meetings and the method for calling special meetings.

4. Powers and duties of board. The board has the following powers and duties.

A. The board has full power, authority and jurisdiction over the fund and the State Compensation Account.

B. The board may perform all acts necessary or convenient in the exercise of any power, authority or jurisdiction over the fund and the State Compensation Account, either in the administration of the fund or in connection with the insurance business carried on under this chapter, as fully and completely as the governing body of a private insurance carrier, for the purposes of this chapter.

C. The board shall discharge its duties with the care, skill, prudence and diligence that a prudent director, acting in a similar capacity and familiar with those matters, would use in conducting a similar enterprise.

D. The board may appoint investment managers to manage, acquire or dispose of the assets of the fund. An investment manager may be designated as an investment agent.

2 (1) An investment manager is any fiduciary designated
4 by the board to manage, acquire or dispose of the
6 assets of the fund. The investment manager shall
 acknowledge in writing that it is a fiduciary under the
 fund.

8 (2) The board may delegate its investment powers to
10 investment managers of the fund. The purchase or sale
12 of any securities by an investment manager must be in
14 the name selected by the board. The authority of an
 investment manager to purchase or sell the securities
 for the fund must be evidenced by written authority
 executed by the manager of the fund.

16 (3) The board may enter into agreements with an
18 investment manager setting forth the investment powers
20 and limitations of the investment manager. The board
22 shall require an investment manager to keep the board
24 currently informed of the nature and amount of the
 investments made for the fund by the investment
 manager. An investment manager is subject to the
 instructions of the board.

26 5. Property of the fund. All premiums and other money paid
28 to the fund, all property and securities acquired through the use
30 of the money and all interest and dividends earned on the money
32 and deposited or invested by the fund are the sole property of
 the fund and are used exclusively for the operation and
 obligations of the fund. The money of the fund is not state
 money. The property of the fund is not state property.

34 6. State appropriations. The fund may not receive any
36 state appropriation other than for the purpose of initial
 capitalization and administrative expenses, as provided in
 section 461.

38 7. Manager. The fund is under the administrative control
40 of the manager appointed by the board under section 455.

42 8. Personal liability excluded. The members of the board
44 and officers or employees of the fund are not liable, either
 jointly or severally, for any debt or obligation created or
 incurred by the fund.

46 **§453. Power to insure**

48 1. Workers' compensation liability insurance. The fund may
50 be used only to insure an employer against liability for
 compensation and benefits under this Title or under the federal

2 Longshore and Harbor Workers' Compensation Act, 33 United States
4 Code, Section 901 (1927), as amended. The fund shall insure the
6 State as an employer against its liability for compensation and
benefits under this Title or under the federal Longshore and
Harbor Workers' Compensation Act, 33 United States Code, Section
901 (1927), as amended.

8 **§454. General powers**

10 1. Powers. For the purpose of exercising the powers in
12 this chapter, the fund may:

14 A. Sue and be sued;

16 B. Have a seal and alter it at will;

18 C. Adopt, amend and repeal rules relating to the conduct of
the business of the fund;

20 D. Enter into contracts relating to the administration of
22 the fund or claims against employers insured by the fund and
for any other purpose consistent with this chapter;

24 E. Rent, lease, buy, pledge, mortgage or sell property in
26 its own name and construct or repair buildings necessary to
provide space for operations of the fund;

28 F. Declare a dividend when there is an excess of assets
30 over liabilities and minimum surplus requirements consistent
with Title 24-A;

32 G. Pay medical expenses, rehabilitation expenses,
34 compensation due claimants of insured employers, salaries
and administrative and other expenses;

36 H. Hire personnel and set salaries and compensation. The
38 state personnel laws do not apply to any of the employees of
the fund or to the hiring of those employees. The State
40 Employees Labor Relations Act, Title 26, chapter 9-B, does
not apply to the fund and its employees;

42 I. Issue guaranty fund certificates, surplus notes or
44 debentures payable out of surplus, borrow money and agree to
pay any rate of return with respect to any guaranty fund
46 certificate, surplus note, debenture or other instrument,
calculated in any manner and on terms approved by the board;
48 and

50 J. Perform all other functions and exercise all other
powers of a domestic mutual insurance company.

2 **§455. Manager**

4 **1. Appointment; qualifications.** The board shall appoint a
6 manager to be in charge of the day-to-day operation of the fund.
8 The manager must have experience as an executive at the general
 management level. The manager is entitled to compensation as set
 by the board and serves at the pleasure of the board.

10 **2. Bond.** Before assuming the duties of the office, the
12 manager must qualify by giving an official bond in a specified
14 amount and with sureties approved by the board. The manager
 shall file the bond with the Secretary of State. The premium for
 the bond is paid by the fund from the account established in
 section 457.

16 **§456. Manager's powers**

18 Subject to the authority of the board and the provisions of
20 this chapter, the manager has the powers and duties prescribed in
 this section.

22 **1. Safety inspections; loss control services.** The manager
24 shall conduct safety inspections of risks and provide advisory
26 services on safety and health measures to employers consistent
 with the financial integrity of the fund.

28 **2. Disbursement of funds.** The manager shall act for the
30 fund in collecting and disbursing money necessary to administer
 the fund and conduct the business of the fund.

32 **3. Abstract summary.** The manager shall prepare an abstract
34 summary of an audit or survey conducted.

36 **4. Reinsurance.** The manager may reinsure all or part of
38 any risk and enter into agreements of reinsurance in the same
 manner as other insurance carriers.

40 **5. General authority.** The manager may perform all acts
42 necessary in the exercise of any power, authority or jurisdiction
44 over the fund, either in the administration of the fund or in
 connection with the insurance business carried on by the fund
 under this chapter, including the establishment of premium rates.

46 **§457. State Compensation Account**

48 **1. Account established.** There is established under the
50 jurisdiction of the fund a revolving account known as the "State
 Compensation Account." The account may not lapse. The manager
 shall deliver all money collected under this chapter to the

account. The money in the account may be used by the fund in carrying out its purposes under this chapter.

2. Investment of money in account. The board may invest money held in the account in investments permitted by law for a mutual insurance company. When selecting investments the primary goal of the board is the financial integrity of the fund but when investments of otherwise equal quality exist, the board shall give preference to any investment that provides a direct benefit to the people of this State.

§458. Application of state laws

The fund is not considered a state agency or other instrumentality of the State. The fund is subject to all state laws governing or applying to a private mutual insurance company, including, but not limited to, Title 24-A, chapters 5 to 17. The insurance operations of the fund are subject to all those provisions of Title 24-A and of this Title applicable to a private insurance company that writes workers' compensation insurance, including, but not limited to, Title 24-A, chapter 25, subchapter II-B. The Superintendent of Insurance has the same powers with respect to the board as the superintendent has with respect to a private workers' compensation insurer under Title 24-A and this Title. The fund is subject to the same income tax liability as a private mutual insurance company in this State under Title 36, Part 8.

§459. Private independent insurance agents

Private independent insurance agents licensed to sell workers' compensation insurance in this State may sell insurance coverage for the fund according to rules adopted by the board. The board shall by rule establish a schedule of commissions that the fund uses to pay for the services of an agent. This section does not prevent the manager of the fund from writing insurance coverage for employers without the assistance of private independent insurance agents.

§460. Reports and information

1. Annual report. The manager shall submit an annual report to the Governor and the Legislature indicating the business conducted by the fund during the previous year and containing a statement of the resources and liabilities of the fund and any other information considered appropriate.

2. Statistical and actuarial data. The manager of the fund shall compile and maintain statistical and actuarial data related to the determination of proper premium rate levels, the incidence

of work-related injuries, costs related to those injuries and any other data considered appropriate. Upon request, this data must be provided to the Superintendent of Insurance, the Workers' Compensation Board and the Department of Labor.

§461. Funding

1. Fund becomes operational upon appropriation. The fund becomes operational upon the receipt of funds provided by appropriation of the Legislature. The board may defer acceptance of all or part of the appropriation for not more than 2 years from the date of the appropriation. Any amount accepted by the fund, plus interest at the rate of 6% a year calculated from the time that the fund accepts the appropriation, must be amortized by the Treasurer of State over a 10-year period and repaid by the fund to the General Fund in equal installments at the end of each fiscal year. The Treasurer of State shall determine the date of the first payment, except that the fund does not begin repayment unless there is a sufficient earned surplus to comply with state law. Repayment begins when a sufficient earned surplus exists.

2. Guaranty fund certificates; surplus notes or debentures. Money advanced to the fund under subsection 1 must be evidenced by guaranty fund certificates that permit the issuance of other guaranty fund certificates, surplus notes, debentures or other instruments with equal rights to payment out of surplus of the fund. In the event of an insufficiency of funds, payments with respect to guaranty certificates may be made pro rata based on outstanding principal amounts of guaranty certificates, surplus notes, debentures or other instruments with equal rights. Guaranty fund certificates or other instruments previously issued to evidence money advanced to the fund under subsection 1 must be exchanged by the Treasurer of State for restated certificates in form and substance consistent with this section to facilitate the issuance of other guaranty fund certificates, surplus notes, debentures or other instruments as provided in this section. Amounts accrued but unpaid pursuant to the terms of outstanding guaranty certificates, surplus notes, debentures or other instruments are deemed to be money advanced for the purposes of this chapter.

Sec. 4. State Government required to insure with fund. When the Competitive Workers' Compensation Fund becomes operational upon the acceptance of a sufficient amount of a legislative appropriation under the Maine Revised Statutes, Title 39-A, section 461, the State shall purchase workers' compensation insurance from the Competitive Workers' Compensation Fund, covering all state employees. The insurance policy takes effect on the first day of the next fiscal year after the Competitive Workers' Compensation Fund becomes operational. Preference in

2 hiring for suitable positions within the Competitive Workers'
3 Compensation Fund must be given to any state employee whose
4 employment is terminated due to this requirement.

6 8 **STATEMENT OF FACT**

10 This bill establishes the Competitive Workers' Compensation
11 Fund as an independent mutual insurance company to provide
12 workers' compensation insurance to the employers of this State.

14 The Competitive Workers' Compensation Fund is patterned
15 after a state mutual insurance company established in Minnesota.
16 It is an independent mutual insurance company and subject to all
17 state laws governing mutual insurers. The fund is under the
18 direction of a board of directors, who are appointed by the
19 Governor and the policyholders. The board of directors is
20 authorized to hire investment managers to assist the board in
21 investing the assets of the fund. The board of directors will
22 select a manager who is responsible for the day-to-day direction
23 of the operation of the fund. The fund is authorized, but not
24 required, to use private insurance agents to sell workers'
25 compensation insurance.

26 The State must use the fund for workers' compensation
27 liability insurance. The fund will become operational only when
28 it receives sufficient initial capitalization from the State.

30 This bill accompanies 2 other pieces of legislation, a bill
31 authorizing a bond issue of \$10,000,000 to capitalize the fund
32 and a resolution proposing an amendment to the Constitution of
33 Maine to safeguard the assets of the fund.
34