

MAINE STATE LEGISLATURE

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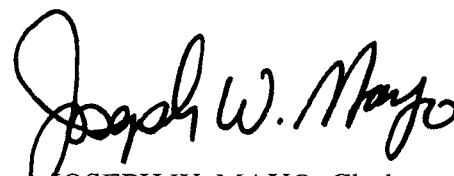
H.P. 1101

House of Representatives, May 24, 1995

**An Act to Clarify and Amend Provisions of the Maine Insurance Code
and the Workers' Compensation Self-insurance.**

(EMERGENCY)

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


JOSEPH W. MAYO, Clerk

Presented by Representative JACQUES of Waterville. (GOVERNOR'S BILL)

2 **Emergency preamble.** Whereas, Acts of the Legislature do not
become effective until 90 days after adjournment unless enacted
as emergencies; and

4
6 Whereas, self-insurers may assume considerable expenses that
may otherwise be avoided under the provisions contemplated by
this legislation; and

8
10 Whereas, current requirements are cost-prohibitive for many
self-insurers; and

12 Whereas, the law currently requires the Maine Self-Insurance
Guarantee Association to assess all new members of the
14 association for their respective contributions to the Maine
Self-Insurance Guarantee Fund; and

16
18 Whereas, the association relies upon information concerning
new members received from the Superintendent of Insurance in
making these assessments; and

20
22 Whereas, the association makes its annual assessments in
July of each year; and

24 Whereas, it is necessary for the Superintendent of Insurance
to notify the association of new members in advance of the annual
26 assessment date; and

28 Whereas, in the judgment of the Legislature, these facts
create an emergency within the meaning of the Constitution of
30 Maine and require the following legislation as immediately
necessary for the preservation of the public peace, health and
32 safety; now, therefore,

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

36 **Sec. 1. 24-A MRSA §2385-F** is enacted to read:

38 **§2385-F. Coverage denial**

40 An insurer shall deny coverage to an employer who owes
undisputed premiums to a previous workers' compensation insurer,
42 including a domestic mutual insurer established pursuant to
section 3703, or to the workers' compensation residual market
44 mechanism.

46 **Sec. 2. 39-A MRSA §403, sub-§3**, as amended by PL 1993, c. 510,
§1, is repealed and the following enacted in its place:

48 **3. Proof of solvency and financial ability to pay; trust.**
50 The employer may comply with this section by furnishing

2 satisfactory proof to the Superintendent of Insurance of solvency
4 and financial ability to pay the compensation and benefits, and
6 depositing cash, satisfactory securities, irrevocable standby
8 letters of credit issued by a qualified financial institution or
10 a surety bond with the board, in such sum as the superintendent
12 may determine pursuant to subsection 8, the bond to run to the
14 Treasurer of State and to be conditional upon the faithful
16 performance of this Act relating to the payment of compensation
18 and benefits to any injured employee. In case of cash or
20 securities being deposited, the cash or securities must be placed
22 in an account at interest by the Treasurer of State, and the
24 accumulation of interest on the cash or securities so deposited
must be credited to the account and may not be paid to the
employer to the extent that the interest is required to support
any present value discounting in the determination of the amount
of the deposit. Any security deposit must be held by the
Treasurer of State in trust for the benefit of the self-insurer's
employees for the purposes of making payments under this Act. If
the superintendent determines that the self-insurer has
experienced a deterioration in financial condition that adversely
affects the self-insurer's ability to pay obligations under this
Act, the security amount may be in excess of the minimum amount
required by this Title.

26 A self-insurer may, with the approval of the Superintendent of
28 Insurance, use the following types of security to satisfy the
30 self-insurer's responsibility to post security required by the
32 superintendent: a surety bond; an irrevocable standby letter of
34 credit; cash deposits and acceptable securities; and an
36 actuarially determined fully funded trust. For purposes of this
38 section, "tangible net worth" means equity less assets that have
40 no physical existence and depend on expected future benefits for
42 their ascribed value. A group self-insurer that maintains a
44 trust actuarially funded to the confidence level required by the
superintendent may use an irrevocable standby letter of credit as
follows: only in an amount not greater than the difference
between the funding to the required confidence level and funding
to the confidence level reduced by 10 percentage points; only as
long as the trust assets are not used as collateral for the
letter of credit; and only as long as the value of trust assets,
excluding the value of the letter of credit, are at least equal
to the present value of ultimate expected incurred claims, claims
settlement costs and, if determined necessary by the
superintendent, administrative costs.

46 A. An individual self-insurer providing an irrevocable
48 standby letter of credit as security shall file with the
50 Superintendent of Insurance a letter of credit, on a form
approved by the superintendent, copies of any agreements or
other documents establishing the terms and conditions of the
employer's reimbursement obligations to the financial

2 institution issuing the letter of credit, together with
3 copies of any required security agreements, mortgages or
4 other agreements or documents granting security for the
5 employer's reimbursement obligations and any other
6 agreements that contain conditions, restrictions or
7 limitations of any kind upon the employer, the
8 superintendent or the Treasurer of State. The form of
9 letter of credit approved by the superintendent must
10 include, but is not limited to, all terms specifically
11 required by this subsection and all terms reasonably
12 required to secure the payment of compensation and benefits
13 to claimants as required under this Act. The
14 superintendent, upon receipt of the original irrevocable
15 standby letter of credit, shall promptly forward it to the
16 Treasurer of State.

17 The Superintendent of Insurance shall adopt rules to
18 establish the qualifications for financial institutions
19 issuing irrevocable standby letters of credit that must
20 include maintenance of a long-term unsecured debt rating of
21 at least A by either Moody's Investors Service, Inc. or
22 Standard and Poor's Corporation, or with commercial paper
23 within the 3 highest short-term rating categories
24 established by Moody's Investors Service, Inc. or Standard
25 and Poor's Corporation. The irrevocable standby letter of
26 credit must be the individual obligation of the issuing
27 financial institution, may not be subject to any agreement,
28 condition, qualification or defense between the financial
29 institution and the employer and may not in any way be
30 contingent on reimbursement by the employer. If the rating
31 of an issuing financial institution that has issued an
32 irrevocable standby letter of credit pursuant to this
33 section falls below the required standard, the employer must
34 obtain a new irrevocable standby letter of credit from a
35 qualified financial institution or must provide other
36 eligible security of equal value approved by the
37 superintendent. The irrevocable standby letter of credit is
38 automatically extended for one year from the date of
39 expiration unless, 90 days prior to any expiration date, the
40 issuing financial institution notifies the superintendent
41 that the financial institution elects not to renew the
42 irrevocable standby letter of credit.

43 An irrevocable standby letter of credit that has been issued
44 by a qualified financial institution and accepted by the
45 Superintendent of Insurance binds the issuing financial
46 institution to pay one or more drafts drawn by the Treasurer
47 of State, as directed by the superintendent, as long as the
48 draft does not exceed the total amount of the irrevocable
49 standby letter of credit. Any draft presented by the
50 Treasurer of State, as directed by the superintendent, must

2 be promptly honored if accompanied by the certification of
4 the superintendent that any obligation under this chapter
6 has not been paid when due or that a proceeding in
8 bankruptcy has been initiated by or with respect to the
10 employer in a court of competent jurisdiction.

12 If the Superintendent of Insurance certifies that the
14 superintendent has been notified by the issuing financial
16 institution that the irrevocable standby letter of credit
18 will expire by its terms in 30 days or less and that the
20 irrevocable standby letter of credit was not replaced within
22 15 days after that notice to the superintendent by other
24 eligible security of equal value approved by the
26 superintendent, then the financial institution must remit
28 within 15 days the full amount of the irrevocable letter of
30 credit to the Treasurer of State without further
32 certification.

34 Any proceeds from a draw on such an irrevocable standby
36 letter of credit by the Treasurer of State, as directed by
38 the Superintendent of Insurance, must be held by the
40 Treasurer of State on behalf of workers' compensation
42 claimants to secure payment of claims until either the
44 superintendent authorizes the Treasurer of State to release
46 those proceeds to the employer upon provision by the
48 employer of replacement security adequate to meet the
50 requirements for security set by the superintendent or the
superintendent directs distribution of the proceeds in
accordance with this Title.

To the extent not inconsistent with state law, the letter of
credit is subject to and governed by the Uniform Customs and
Practice for Documentary Credits, 1983, International
Chamber of Commerce Publication No. 400. If any legal
proceedings are initiated with respect to payment of the
letter of credit, those proceedings are subject to the
State's courts and law.

B. The Superintendent of Insurance shall prescribe the form
of the surety bond that may be used to satisfy, in whole or
in part, the self-insurer's responsibility under this
section to post security. The bond must be continuous, be
subject to nonrenewal only upon not less than 60 days'
notice to the superintendent, cover payment of all present
and future liabilities incurred under this Act while the
bond is in force and cover payments that become due while
the bond is in force that are attributable to injuries
incurred in prior periods and otherwise unsecured by cash,
irrevocable standby letters of credit or acceptable
securities. A bond must be held until all payments secured
by the board have been made or until the board has been

2 replaced by other eligible security approved by the
3 superintendent that covers all outstanding liabilities.
4 Payments under the bond are due within 30 days after notice
5 has been given to the surety by the board that the principal
6 has failed to make a payment required under the terms of an
7 award, agreement or governing law. A trust established to
8 satisfy the requirements of this section may not be funded
9 by a surety bond.

10 C. A self-insurer may establish an actuarially determined
11 fully funded trust, funded at a level sufficient to
12 discharge those obligations incurred by the employer
13 pursuant to this Act as they become due and payable from
14 time to time, as long as the Superintendent of Insurance
15 requires that the value of trust assets be at least equal to
16 the present value of ultimate expected incurred claims and
17 claims settlement costs, plus required safety margins and,
18 if determined necessary by the superintendent,
19 administrative costs for the operation of the plan of
20 self-insurance. An actuarially determined fully funded
21 trust must be funded as follows, as determined by the
22 superintendent.

24 (1) For individual and group self-insurers, the amount
25 of security must be determined based upon an actuarial
26 review. The actuarial review must take into
27 consideration the use by a group self-insurer of any
28 irrevocable standby letter of credit. Except as
29 provided in subparagraph (3), initial funding for each
30 plan year must be maintained at the 90% or higher
31 confidence level. Funding after the completion of the
32 initial plan year may be established no lower than the
33 75% confidence level if the following has occurred:

34 (a) A year considered for reduction is completed;

35 (b) The supporting actuarial report includes an
36 evaluation of the completed year experience with
37 claims evaluated not less than 6 months from the
38 end of the plan year; and

39 (c) Prior approval from the superintendent is
40 obtained.

41 For the purposes of determining the confidence level,
42 all completed years at the same confidence level may be
43 aggregated. Funds may not be released from the trust
44 or transferred between years except as approved by the
45 superintendent.

46 (2) A group self-insurer may elect to fund at a higher
47 confidence level through the use of cash, marketable
48 securities, or other eligible security approved by the
49 superintendent.

2 securities or reinsurance. If a member of a group
4 self-insurer terminates membership in the group for any
6 reason, that member shall fund the member's
8 proportionate share of the liabilities and obligations
10 of the trust to the 95% confidence level. If for any
12 reason the departing member fails to fund the member's
 proportionate share of the trust's exposure to the 95%
 level of confidence, the remaining members of the group
 shall make the additional contribution no later than
 the anniversary date of the program as required to fund
 the departing member's exposure in accordance with this
 provision.

14 (3) Depending upon the financial condition of the
16 self-insurer, and if approved by the superintendent, a
18 self-insurer that has maintained an actuarially
20 determined fully funded trust for a period of 5 or more
 consecutive years may fund all years, including the
 prospective fund year, in the aggregate at the 75% or
 higher confidence level.

22 (4) Trust assets must consist of cash or marketable
24 securities of a type and risk character as specified in
26 subsection 9. The trustee shall submit a report to the
28 superintendent not less frequently than quarterly that
30 lists the assets comprising the corpus of the trust,
32 including a statement of their market value and the
34 investment activity during the period covered by the
36 report. The trust must be established and maintained
38 subject to the condition that trust assets may not be
40 transferred or revert in any manner to the employer
42 except to the extent that the superintendent finds that
44 the value of the trust assets exceeds the present value
 of incurred claims and claims settlement costs with an
 actuarially indicated margin for future loss
 development. In all other respects, the trust
 instrument, including terms for certification, funding,
 designation of trustee and payout, must be as approved
 by the superintendent, except that the value of the
 trust account must be actuarially calculated at least
 annually by a casualty actuary who is a member of the
 American Academy of Actuaries and adjusted to the
 required level of funding.

46 D. Notwithstanding any provision of this chapter, any bond
48 or security deposit required of a public employer that is a
50 self-insurer may not exceed \$50,000, as long as the public
 employer has a state-assessed valuation equal to or in
 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

2 bond rating agency or a net worth equal to or in excess of
3 \$35,000,000. If a county, city or town relies upon a bond
4 rating, it shall value or cause to be valued its unpaid
5 workers' compensation claims pursuant to sound accepted
6 actuarial principles. This value must be incorporated in
7 the annual audit of the county, city or town, together with
8 disclosure of funds appropriated to discharge incurred
9 claims expenses. "Public employer" includes the State, the
10 University of Maine System, counties, cities and towns.

11
12 E. In consideration of a self-insuring entity's application
13 for authorization to operate a plan of self-insurance, the
14 Superintendent of Insurance may require or permit an
15 applicant to employ valid risk transfer by the utilization
16 of primary reinsurance, subject to the provisions of
17 subsection 8. Standards respecting the application of
18 reinsurance must be contained in a rule adopted by the
19 superintendent pursuant to the Maine Administrative
20 Procedure Act. Reinsurance must be defined as insurance
21 covering workers' compensation exposures in excess of risk
22 retained by a self-insurer.

23
24 F. An employer may be eligible for approved self-insurance
25 status pursuant to this Act if the employer submits a
26 written guarantee of the obligations incurred pursuant to
27 this Act, the guarantee to be issued by a United States or
28 Canadian corporation that is a member of an affiliated group
29 of which the employer is a member, and which corporation is
30 solvent and demonstrates an ability to pay the compensation
31 and benefits, and the guarantee is in a form acceptable to
32 the Superintendent of Insurance. The guarantor shall
33 provide audited annual financial statements and such other
34 information as the superintendent may require, including
35 quarterly financial statements, and the employer shall
36 provide a cash deposit, satisfactory securities, irrevocable
37 standby letters of credit issued by a qualified financial
38 institution or a surety bond as otherwise required by this
39 Act in an amount not less than \$100,000. The guarantor is
40 deemed to have submitted to the jurisdiction of the board
41 and the courts of this State for purposes of enforcing the
42 guarantee. The guarantor, in all respects, is bound by and
43 subject to the orders, findings, decisions or awards
44 rendered against the employer for payment of compensation
45 and any penalties or forfeitures provided under this Act.
46 The superintendent, following hearing, may revoke the
47 self-insured status of the employer if at any time the
48 assets of the guarantor become impaired or encumbered or are
49 otherwise found to be inadequate to support the guarantee.

50 G. A subsidiary employer may be eligible for approved
self-insurance status pursuant to this Act if: the

2 subsidiary employer files an application jointly with a
4 qualified United States or Canadian parent corporation that
6 has direct ownership of a majority voting interest of the
8 subsidiary employer; the parent corporation and subsidiary
10 employer submit an irrevocable contract of assignment, on a
12 form approved by the Superintendent of Insurance, of the
14 subsidiary employer's obligations incurred pursuant to this
16 Act; the parent corporation is solvent and demonstrates an
18 ability to pay the compensation and benefits of the
20 subsidiary employer; and the subsidiary employer meets all
22 other requirements for application and qualification as a
24 self-insurer under this chapter and under any applicable
26 rules adopted by the superintendent. The irrevocable
28 contract of assignment and application must be signed by a
30 duly authorized officer of each corporation and the
32 application must include a board of directors' resolution
34 from each entity as evidence of each officer's authority to
36 enter into the contract. The superintendent may determine
38 the subsidiary employer's eligibility for self-insurance
40 authority and the amount of required security based upon the
parent corporation's consolidated financial statement, as
long as the employer complies with paragraph H. A
subsidiary employer currently authorized to self-insure need
not pay the application fee required of a new applicant in
order to file an application to qualify under this
subsection, but the subsidiary employer and parent
corporation must provide all information required under this
subsection as if they were a new applicant. Once the
subsidiary employer becomes authorized to self-insure under
this section, the parent corporation assumes liability for
all prior workers' compensation liabilities incurred by the
subsidiary employer during the period of self-insurance
prior to the date of authorization under this subsection,
unless the subsidiary employer files an alternative plan
approved by the superintendent. The parent corporation and
the subsidiary employer must both be named on the
certificate of authorization for self-insurance authority.
Upon issuance of a certificate of authorization pursuant to
this subsection, the following applies.

(1) The parent corporation is deemed to have submitted
to the jurisdiction of the board and the courts of the
State for the purposes of payment of workers'
compensation claims of the subsidiary employer and is
deemed to have submitted to the jurisdiction of the
superintendent for purposes of implementation of this
Act. The parent corporation, in all respects, is bound
by and subject to all orders, findings, decisions or
awards rendered against the subsidiary employer for

2 payment of compensation and any penalties or
3 forfeitures provided under this Act.

4 (2) A subsidiary employer authorized under this
5 subsection and the parent corporation are considered
6 one employer for the purposes of membership in the
7 Maine Self-Insurance Guarantee Association. In the
8 event of termination, transfer, insolvency, dissolution
9 or bankruptcy of a subsidiary employer qualifying under
10 this subsection, the parent corporation assumes all
11 assessment obligations of the subsidiary employer for
12 its period of self-insurance and is not considered a
13 new member of the association.

14 (3) If the subsidiary employer fails for any reason to
15 pay compensation and benefits as required under this
16 Act, the parent corporation stands in the place of the
17 subsidiary employer and is deemed to be the employer,
18 subject to all requirements and provisions of this
19 Act. For the purposes of payment of benefits and
20 compensation under this Act, an employee of the
21 subsidiary employer is deemed to be concurrently
22 employed by both corporations. Concerning notification
23 of injury to an employee of the subsidiary employer,
24 notice to or knowledge of the occurrence of the injury
25 on the part of the subsidiary employer is deemed notice
26 or knowledge on the part of the parent corporation.
27 The transfer, insolvency, dissolution or bankruptcy of
28 a subsidiary employer qualifying under this subsection
29 does not relieve the parent corporation from payment of
30 compensation for injuries or death sustained by an
31 employee during the time the subsidiary employer was
32 approved for self-insurance authority under this
33 subsection and the parent corporation continues to be
34 deemed an employer until such time as all outstanding
35 workers' compensation claims have been discharged.

36 (4) The transfer, insolvency, dissolution or
37 bankruptcy of a parent corporation causes the
38 termination of the subsidiary employer's authorization
39 to self-insure and a termination plan must be filed
40 pursuant to subsection 14.

41 H. Each individual self-insurer shall submit with its
42 application, and not less frequently than annually
43 thereafter, a financial statement of current origin that has
44 been audited by a certified public accountant. When a
45 self-insurer qualifies on the basis of a financial guarantee
46 or on the basis of an irrevocable contract of assignment,
47 the Superintendent of Insurance may accept an audited
48 the Superintendent of Insurance may accept an audited
49 the Superintendent of Insurance may accept an audited
50 the Superintendent of Insurance may accept an audited

2 financial statement of the guarantor or parent corporation
3 in satisfaction of this requirement and may also require
4 combining statements provided in an array that is reconciled
5 to the consolidated report.

6 **Sec. 3. 39-A MRSA §403, sub-§6, ¶A**, as enacted by PL 1991, c.
7 885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

8
9 A. Any approval granted by the Superintendent of Insurance
10 to an individual self-insurer or group self-insurer must be
11 for a term of not more than one year. Application A
12 complete application for renewal of approval to self-insure
13 must be submitted to the superintendent not less than 21
14 days prior to the self-insurer's renewal date, except that
15 evidence of reinsurance coverage may be submitted up to 3
16 working days prior to renewal. Notwithstanding this
17 paragraph, when a self-insurer has made a timely and
18 complete application for renewal, the existing authorization
19 does not expire until the renewal has been determined by the
20 superintendent. A renewal application must contain: all
21 reports, statements and other data required to be filed
22 annually under rules adopted by the superintendent; copies
23 of any proposed reinsurance contracts, binders or cover
24 notes; evidence of security posted; notice of any changes in
25 servicing arrangements; and notice of any change in control
26 of the self-insurer and its effect, if any, on guarantees
27 provided pursuant to subsection 3. The superintendent may
28 refuse to grant or renew self-insurance approval based upon
29 any of the following grounds:

30
31 (1) Failure to submit any information that is required
32 by law or rule or is reasonably requested by the
33 superintendent;

34
35 (2) Failure of a self-insurer to establish that it has
36 met all applicable requirements of law or rule;

37
38 (3) Fraud or misrepresentation in the application; or

39
40 (4) Any ground upon which approval may be suspended or
41 revoked as provided in subsection 13.

42
43 The effective date of any notice of nonrenewal under this
44 subsection is on or after the date of the notice. A notice
45 of nonrenewal under this subsection may not include
46 nonrenewal for any approved period of self-insurance prior
47 to the notice.

48
49 **Sec. 4. 39-A MRSA §403, sub-§9**, as enacted by PL 1991, c. 885,
50 Pt. A, §8 and affected by §§9 to 11, is amended to read:

2 **9. Acceptable deposit funds or investment for trust funds.**

3 In addition to cash, the deposit ~~or~~ funds ~~or~~ permissible
4 investments for trust funds acceptable to the Superintendent of
5 Insurance as a security deposit ~~include United States Government~~
6 ~~bonds, notes or bills, issued or guaranteed by the United States~~
7 ~~of America; bonds secured by the full faith, credit and taxing~~
8 ~~power of political subdivisions of the United States rated in the~~
9 ~~3 highest grades by a national rating agency such as Moody's~~
10 ~~Investors Service, Inc., Standard and Poor's Corporation or Fitch~~
11 ~~Investors Service, Inc. as of the foregoing year end; money~~
12 ~~market funds invested only in United States Government or~~
13 ~~government agency obligations with a maturity not exceeding one~~
14 ~~year; high grade~~ are bonds, notes and bills that are issued by
15 and the direct obligation of the United States Treasury and are
16 the direct obligations of the following United States Government
17 agencies: the Government National Mortgage Association; the
18 Federal Home Loan Bank; the Federal Farm Credit Bank; the Student
19 Loan Marketing Association; the Federal National Mortgage
20 Association; any state of the United States or any subdivision of
21 any state to which are pledged the full faith and credit of the
22 state or subdivision, the unsecured debt of which is rated "A" or
23 better by Standard and Poor's Corporation or the rating
24 equivalent of Moody's Investors Service, Inc., Fitch Investors
25 Service, Inc., or any other nationally recognized statistical
26 rating agency; commercial paper rated as either "A-1" or "P-1" by
27 ~~a nationally recognized bond rating service such as~~ Moody's
28 ~~Investors Service, Inc., Standard and Poor's Corporation or the~~
29 rating equivalent of Fitch Investors Service, Inc., or money
30 ~~market funds invested in such paper or any other nationally~~
31 recognized statistical rating agency; money market funds rated
32 "Aam" or "AAM-G" or better by Standard and Poor's Corporation or
33 the rating equivalent of any other nationally recognized
34 statistical rating agency; certificates of deposit issued by a
35 duly chartered commercial bank or thrift institution in the State
36 protected by the Federal Deposit Insurance Corporation if such a
37 bank or institution possesses assets of at least \$100,000,000 and
38 maintains a ratio of capital to assets equal to or greater than 6
39 1/2%; savings certificates issued by any savings and loan
40 association in the State protected by the Federal Savings and
41 Loan Deposit Insurance Corporation if such an association
42 possesses assets of at least \$100,000,000 and maintains a ratio
43 of capital to assets equal to or greater than 6 1/2%; surety
44 ~~bonds in a form prescribed by the superintendent issued by any~~
45 ~~corporate surety that meets the qualifications prescribed by rule~~
46 ~~of the superintendent; irrevocable standby letters of credit~~
47 ~~issued to the Treasurer of State by financial institutions with~~
48 ~~long term unsecured debt ratings of at least A by either Moody's~~
49 ~~Investors Service, Inc. or Standard and Poor's Corporation or~~
50 ~~with commercial paper within the 3 highest short term rating~~

categories--established--by--Moody's--Investors--Service,--Inc.--or
Standard--and--Peer's--Corporation;--and--such--other--investments
approved--by--the--superintendent corporate bonds rated "Aaa," "Aa1"
or "Aa2" by Moody's Investors Service, Inc., or rated "AAA,"
"AA+" or "AA" by Standard and Poor's Corporation, or the rating
equivalent of Fitch Investors Service, Inc. or any other
nationally recognized statistical rating agency, in an amount not
to exceed 20% of the total investment portfolio; and such other
investments approved by the superintendent.

Investments must be diversified in a prudent manner to ensure
that funds are maintained at a sufficient level to discharge
workers' compensation obligations incurred by the employer
pursuant to this Act as those obligations become due and payable.

Sec. 5. 39-A MRSA §404, sub-§4, ¶A, as enacted by PL 1991, c.
885, Pt. A, §8 and affected by §§9 to 11, is amended by amending
subparagraphs (2) and (3) to read:

(2) Shall assess each member of the association as
follows:

(a) Each individual self-insurer must be annually
assessed an amount equal to 1% of the annual
standard premium that would have been paid by that
individual self-insurer during the prior calendar
year; payment to the association must be made by
September 15th following the close of that
calendar year. When any such assessment is paid
based in whole or in part upon estimates of annual
standard premium for the prior calendar year, the
next year's assessment must include an adjustment
of the assessment of such that prior year based on
actual audited annual standard premium. ~~Regardless~~
~~of--the--size--of--the--fund--referred--to--in~~
~~subparagraph--(3),--during--its--first--30--months--of~~
~~membership,--no--individual--self-insurer--may~~
~~discount--or--reduce--this--1%--assessment;~~

(b) Each group self-insurer must be annually
assessed an amount equal to .1% of the total
annual standard premium that would have been paid
by all the members of that group self-insurer
during the prior calendar year; payment to the
association must be made by September 15th
following the close of that calendar year. When
any such assessment is paid based in whole or in
part upon estimates of annual standard premium for
the prior calendar year, the next year's
assessment must include an adjustment of the

2 assessment of such that prior year based on actual
3 audited annual standard premium. ~~Regardless of the~~
4 ~~size of the fund referred to in subparagraph (3),~~
5 ~~during its first 30 months of membership, no group~~
6 ~~self-insurer may discount or reduce this .1%~~
7 ~~assessment;~~

8 (c) Each member self-insurer must be notified of
9 the assessment at least 30 days before it is due;

10 (d) If a self-insurer is a member of the
11 association for less than a full calendar year,
12 the annual standard premium must be adjusted by
13 that portion of the year the self-insurer is not a
14 member of the association; and

15 (e) If application of the contribution rates
16 referred to in divisions (a) and (b) would produce
17 an amount in excess of the limits of the fund
18 established in subparagraph (3), an equitable
19 proration must be made; and

20 (f) Upon notification by the superintendent,
21 pursuant to subsection 7, paragraph C, of the
22 existence and identity of a new member
23 self-insurer and regardless of the size of the
24 fund referred to in subparagraph (3), the
25 association shall assess each new member
26 self-insurer annually, whether individual or
27 group, in accordance with divisions (a) and (b)
28 for the first 30 months of its membership in the
29 association. An individual or group self-insurer
30 may not discount or reduce its assessment during
31 the first 30 months of membership as determined in
32 accordance with the superintendent's notification
33 of new member status;

34 (3) Shall administer a fund, to be known as the Maine
35 Self-Insurance Guarantee Fund, which must receive the
36 assessments required in subparagraph (2). Prior to
37 December 1, 1992, this fund may not exceed \$1,000,000,
38 except that once the fund reaches \$1,000,000, the fund
39 may not exceed \$1,000,000 plus all subsequent initial
40 assessments of new member self-insurers that are
41 required to be made in subparagraph (2), ~~divisions (a)~~
42 ~~and (b)~~ division (f). After November 30, 1992, this
43 fund may not exceed \$2,000,000, except that once the
44 fund reaches \$2,000,000, the fund may not exceed
45 \$2,000,000 plus all subsequent initial assessments of
46 new member self-insurers that are required to be made

2 in subparagraph (2), ~~divisions--(a)--and--(b)~~ division
3 (f). The costs of administration by the association
4 must be borne by the fund and the association is
5 authorized to secure reinsurance and bonds and to
6 otherwise invest the assets of the fund to effectuate
7 the purpose of the association, subject to the approval
8 of the Superintendent of Insurance.

9
10 (a) The association may purchase primary excess
11 insurance from an insurer licensed in this State
12 for the appropriate lines of authority to defray
13 its exposure to loss occasioned by the default of
14 one or more of its members. Any excess insurance
15 so purchased must be limited to coverage of
16 postassessment liability of the association's
17 members and the association shall fund any such
18 purchase by levying a special assessment on its
19 members for this purpose or by application of any
20 unencumbered funds available that have not been
21 raised by imposition of any preassessment or
22 postassessment. The association may obtain from
23 each member any information it may reasonably
24 require in order to facilitate the securing of
25 this primary excess insurance. The association
26 shall establish reasonable safeguards designed to
27 ensure that information so received is used only
28 for this purpose and is not otherwise disclosed;

29 **Sec. 6. 39-A MRSA §404, sub-§7, ¶C** is enacted to read:

30
31 C. The Superintendent of Insurance shall notify the
32 association of the existence and identity of each
33 self-insurer that is a new member of the association within
34 30 days of the superintendent's determination of the
35 self-insurer's membership.

36
37 **Emergency clause.** In view of the emergency cited in the
38 preamble, this Act takes effect when approved.

40 STATEMENT OF FACT

41
42 This bill amends the Maine Insurance Code and the Maine
43 Revised Statutes, Title 39-A, sections 403 and 404 as follows.

44
45 The bill adds a requirement that an insurer deny coverage to
46 any employer that owns undisputed premiums for workers'
47 compensation coverage.
48

2 The bill amends Title 39-A, section 403, subsection 3. It
adds language allowing the Superintendent of Insurance to require
4 security in excess of the amount required by law if the
superintendent determines that the self-insurer has experienced a
deterioration in financial condition. This language currently
6 appears in Title 39-A, section 403, subsection 8.

8 Current law requires self-insured employers to meet
additional financial standards in order to be able to provide
10 security for workers' compensation claims by way of a letter of
credit or by way of an actuarially determined fully funded
12 trust. These standards have been removed. Use of a letter of
credit or actuarially determined fully funded trust is available
14 to all individual self-insurers, unless the self-insurer has
experienced deteriorating financial condition.

16 The bill further changes the law to allow a group
self-insurer to utilize a letter of credit to fund a certain
18 percentage of its trust fund. It also removes the template for a
letter of credit from the law, provides that letters of credit be
20 on forms approved by the Superintendent of Insurance and sets
22 general standards for development of a letter of credit.

24 Current law requires that actuarially determined trust funds
be maintained at the 90% confidence level. Title 39-A, section
26 403, subsection 3 is further amended to provide that
self-insurers that have maintained trust funds for 18 months may
28 reduce funding to the 75% confidence level. The initial funding
year must be maintained at the 90% confidence level. It also
30 provides that self-insurers that have been self-insured for 5
years may fund at the 75% confidence level for all years.

32 The bill provides another category of qualification for
self-insurance authority. It allows a subsidiary employer that
34 is owned by a United States or Canadian corporation to file a
joint application to self-insure and qualify to self-insure based
36 upon the financial statements of the parent corporation. It
requires the parent corporation to step into the shoes of the
38 subsidiary by signing an irrevocable contract of assignment for
the purposes of workers' compensation obligations under the Maine
40 Workers' Compensation Act. If the parent corporation is
transferred, dissolved or becomes insolvent or bankrupt, a
42 termination plan must be filed.

44 The bill further amends Title 39-A, section 403, subsection
46 3 by eliminating the requirement that guarantors of self-insurers
automatically file quarterly financial statements. Quarterly
48 financial statements need to be filed only when determined
necessary by the Superintendent of Insurance.

50

2 The bill amends Title 39-A, section 403, subsection 6 to
provide that a self-insurer's authority remains in effect pending
review and approval of a self-insurer's renewal application, if
4 the application is filed in a timely manner and is complete.

6 The bill amends Title 39-A, section 403, subsection 9 by
removing confusing and ambiguous language from the investment
8 provisions, by adding language that allows the Superintendent of
Insurance to further determine factors to be considered in the
10 investment mix and by adding specifically identifiable investment
vehicles that are considered safe, including: direct obligations
12 of the Government National Mortgage Association, the Federal Home
Loan Bank, the Federal Farm Credit Bank, the Student Loan
14 Marketing Association and the Federal National Mortgage
Association; direct obligations of any state of the United States
16 or any subdivision of any state to which are pledged full faith
and credit of a state, the unsecured obligation debt of which is
18 rated "A" or better; and money market funds rated "AAm" or
"AAm-G" or better. It also adds a provision that investments
20 must be prudent, and allows investments in corporate bonds in an
amount not to exceed 20% of the total portfolio.

22 The bill also removes language relative to surety bonds and
24 moves language regarding letters of credit to Title 39-A, section
403, subsection 3.

26 The bill clarifies the authority of the Maine Self-Insurance
28 Guarantee Association to make assessments for the Maine
Self-Insurance Guarantee Fund upon notification by the
30 Superintendent of Insurance of the existence of a new member
self-insurer.