

MAINE STATE LEGISLATURE

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L.D. 1757

DATE: March 12, 1996

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BANKING AND INSURANCE

Reported by: Senator McCORMICK of Kennebec for the Committee.

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**STATE OF MAINE
SENATE
117TH LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT " A " to S.P. 688, L.D. 1757, Bill, "An Act to Clarify and Amend Provisions of the Workers' Compensation Act Relating to Workers' Compensation Self-insurance"

Amend the bill in section 3 in paragraph B in the 6th line (page 2, line 4 in L.D.) by inserting after the following: "superintendent." the following: 'The superintendent may waive the triennial actuarial evaluation if the number of outstanding claims is not of sufficient volume to permit a credible actuarial analysis.'

Further amend the bill in section 4 in paragraph A in the 2nd blocked paragraph in the last line (page 3, line 19 in L.D.) by inserting after the following "security." the following: 'A limited liability company may be eligible to deduct its amount of demonstrated working capital from the value of the posted security pursuant to rules adopted by the superintendent.'

Further amend the bill by striking out all of section 6 (page 4, lines 15 to 50 and pages 5 to 7 and page 8, lines 1 to 45 in L.D.) and inserting in its place the following:

'Sec. 6. 39-A MRSA §403, sub-§14, as enacted by PL 1991, c. 885, Pt. A, §8 and affected by §§9 to 11, is repealed and the following enacted in its place:

14. Reportable events; termination of self-insurance authority; application for continuing self-insurance authority

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2 and nonrenewal or revocation order. A self-insurer must report
3 the occurrence of events as required by this subsection. An
4 employer may elect to voluntarily terminate its authority to
5 self-insure at any time or may make application for continuing
6 authority to self-insure subject to the requirements of this
7 subsection and any rules adopted by the Superintendent of
8 Insurance. The superintendent may make a determination that an
9 employer's authority to self-insure has terminated in accordance
10 with this subsection and any rules adopted by the superintendent
11 or may grant approval of an application for continuing
12 self-insurance authority. For the purposes of this subsection,
13 "employer" includes a successor employer assuming all workers'
14 compensation liabilities of an approved self-insured employer as
15 a result of the occurrence of one of the events in paragraph A.

16 A. In order for the superintendent to make a determination
17 as to whether the occurrence of an event results in a
18 termination of an individual employer's self-insured plan or
19 results in a need for modification of the terms and
20 conditions of the plan, an approved self-insurer must report
21 any of the following events to the superintendent at least
22 45 days in advance of the event's occurrence, if known, or
23 no later than 10 days after the event's occurrence, if not
24 known in advance:

- 26 (1) The sale of 20% or more of the common stock or net
27 assets of the self-insurer;
- 28 (2) A division of the business;
- 29 (3) A spin-off of the business;
- 30 (4) A leveraged buyout of the business;
- 31 (5) A reorganization of the business;
- 32 (6) A change in business form;
- 33 (7) An acquisition by or merger of the business with
34 another entity;
- 35 (8) A change in a partnership agreement;
- 36 (9) A change in the membership or managers of a
37 limited liability company;
- 38 (10) Dissolution of a partnership or a limited
39 liability company;
- 40 (11) Cessation of business in the State; or

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2 (12) Any other event affecting the ownership of the
4 business or the structure of the business as identified
 in rules adopted by the superintendent.

6 Notwithstanding any other provision of this paragraph, an
8 employer that elects to apply to continue to self-insure
 under paragraph C must notify the superintendent 45 days in
10 advance of the event's occurrence and must file an
 application for continuing authority to self-insure with the
12 superintendent 30 days in advance of the event's
 occurrence. At the discretion of the superintendent and if
14 good cause is shown, an employer may submit an application
 to continue to self-insure less than 30 days in advance of
 the event's occurrence.

16 B. If a self-insured employer elects to terminate its
18 self-insurance program, or a portion of its program, it must
 submit written notice and a written termination plan to the
20 superintendent at least 30 days in advance of the proposed
 termination date. In the event that a self-insurer elects
22 to terminate its approval in this State without filing a
 plan acceptable to the superintendent, the superintendent
24 shall issue an order prescribing the terms and conditions of
 the termination. The termination plan must specify, but is
26 not limited to, procedures for claims handling, reservation
 of assets or other security acceptable to the superintendent
28 to be maintained in the State to discharge claims
 liabilities and other obligations under this Act and a
30 description of how ultimate reserves were determined. The
 termination plan must contain a written agreement that the
32 self-insurer continues to be subject to informational
 filings respecting changes in ownership, financial
34 condition, and actuarial evaluation of claims, claims
 expense reserves and loss transfers when determined
36 necessary by the superintendent to ensure that claims are
 adequately secured. The plan must also comply with the
38 terms and conditions prescribed by rule by the
 superintendent. To protect the interests of claimants, the
40 superintendent may require a further deposit to be held in
 trust by the Treasurer of State or may require full funding
42 of workers' compensation liabilities.

44 C. If the self-insured employer and any successor employer
 elect to continue to self-insure after the occurrence of an
46 event in paragraph A, the employer and any successor
 employer must file notice of intent to continue to
48 self-insure with an application for continuing authority to
 self-insure. In order to qualify to file for continuing
50 self-insurance authority, any successor employer must assume

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2 100% of the liabilities of the predecessor self-insured
3 employer and must show that the business in the State
4 remains substantially the same.

6 (1) The notice of intent and application to continue
7 to self-insure must be received by the superintendent
8 30 days prior to the event's occurrence. The
9 application must be made on a form approved by the
10 superintendent and include the application fee required
11 in Title 24-A, section 601. Within 7 days of receipt
12 by the superintendent of the application to continue to
13 self-insure, the employer and any successor employer
14 must provide all information requested by the
15 superintendent to allow the superintendent to make a
16 determination under this section.

18 (2) While the application is pending, the
19 superintendent may request any other information from
20 the applicant determined by the superintendent to be
21 necessary for review of the application. The applicant
22 must promptly provide any additional information upon
23 request in the most expeditious manner.

24 (3) While the application is pending and during the
25 30-day period following a denial of an application for
26 continuing self-insurance authority, the employer and
27 any successor employer must maintain the security and
28 reinsurance as required by the employer's certificate
29 of authority, must continue to comply with all other
30 provisions of the employer's certificate of authority
31 and must provide any additional security determined by
32 the superintendent to be necessary under the
33 circumstances. During the application period, the
34 self-insurance authority of the employer continues,
35 consistent with the terms and conditions of the
36 employer's certificate of authority.

38 (4) Failure to provide the information when requested
39 or failure to comply with the terms and conditions of
40 the employer's certificate of authority or with any
41 additional conditions prescribed by the superintendent
42 will result in automatic termination of the employer's
43 authority to self-insure and the issuance of an order
44 by the superintendent that prescribes the terms and
45 conditions of a termination plan.

46 D. The superintendent shall notify the employer in writing
47 within 30 days of receipt of all requested information
48 whether the employer's application for continuing
49 self-insurance authority is approved or denied. The
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2 superintendent's notice must specify the reasons for the
3 denial or must specify the terms and conditions for
4 continuing self-insurance authority as prescribed by this
5 section and any rules adopted by the superintendent.

6 (1) In making a determination, the superintendent must
7 consider, among other things, whether the successor
8 employer has assumed 100% of the workers' compensation
9 liabilities of the employer, whether the successor
10 employer qualifies for self-insurance authority
11 pursuant to subsection 3 and whether the successor
12 employer maintains substantially the same business
13 operations as the predecessor self-insured employer.
14 The superintendent may also consider, among other
15 things, whether the successor employer employs a
16 substantially greater number of employees than did the
17 predecessor employer. For purposes of this
18 subparagraph, the successor employer has assumed 100%
19 of the workers' compensation liabilities of the
20 employer if the successor employer is unconditionally
21 liable for payment of all benefits that are the
22 obligations of the self-insured employer, regardless of
23 date of injury and notwithstanding agreements for
24 reimbursement from reinsurers or other entities
25 agreeing to reimburse the successor employer for
26 payments associated with self-insurance obligations.

27 (2) If the superintendent denies the application, the
28 effective date of the termination is 30 days from the
29 date of the superintendent's notice. The self-insurer
30 may request a hearing on this decision within 30 days
31 from the date of the notice. Upon a request for
32 hearing, there is no automatic stay of the
33 superintendent's decision, but the effective date of
34 termination may be stayed by order of the
35 superintendent. Prior to the effective date of the
36 termination, the employer must file a termination plan
37 consistent with paragraph B. After denial of an
38 application, a successor employer may apply for
39 authority to self-insure its workers' compensation
40 obligations pursuant to this section.

41 E. If at any time the superintendent determines that a
42 self-insurer has failed to notify the superintendent of the
43 occurrence of any of the events identified in paragraph A,
44 the self-insurer may be subject to penalties pursuant to
45 Title 24-A, section 12-A, if it is determined that the
46 occurrence of the event had a substantial impact on the
47 financial condition of the self-insured employer. As soon
48 as the superintendent notifies the self-insurer that the
49 self-insurer has failed to notify the superintendent of the
50 occurrence of any of the events identified in paragraph A,

2 superintendent has determined that the self-insurer failed
3 to notify the superintendent of the occurrence of any of
4 these events, the self-insurer must comply with this
5 subsection.

6 F. If a self-insurer's approval is revoked or not renewed
7 pursuant to subsection 6 or 13, the superintendent must
8 issue an order that prescribes terms and conditions related
9 to the termination of the plan. The terms of the order must
10 conform to, but need not be limited to, the requirements of
11 paragraph B.

12 G. Any order issued pursuant to this subsection, including
13 an order directing a self-insurer to produce relevant
14 information, may be enforced as provided by Title 24-A,
15 section 214.

16 H. A self-insurer approved by the superintendent to
17 continue self-insurance authority under paragraph D is not
18 subject to assessments as a new member of the Maine
19 Self-Insurance Guarantee Association. The self-insurer is
20 subject to applicable annual assessments or postinsolvency
21 assessments levied by the Maine Self-Insurance Guarantee
22 Association.

23 (1) This paragraph applies to all employers authorized
24 by the superintendent to self-insure on or after
25 September 18, 1981. Prior to October 31, 1996, an
26 employer that would have qualified as a successor
27 employer under this subsection may apply for a refund
28 or partial refund of money paid as a new member
29 assessment to the Maine Self-Insurance Guarantee
30 Association on a form approved by the Maine
31 Self-Insurance Guarantee Association. To qualify for a
32 refund, the successor self-insurer must show that it
33 would have qualified for continuing self-insurance
34 authority under this subsection and that it assumed
35 100% of the workers' compensation liabilities of the
36 former self-insurer. The Maine Self-Insurance
37 Guarantee Association shall review the application and
38 submit a recommendation to the superintendent. The
39 superintendent shall approve or disapprove the
40 application for a refund within 30 days. If the refund
41 is approved, assessment money paid by the successor
42 employer to the Maine Self-Insurance Guarantee
43 Association must be refunded without interest. If such
44 a refund would cause the fund to be reduced below
45 \$2,000,000, the Maine Self-Insurance Guarantee
46 Association shall establish an equitable schedule for
47 the payment of the refund. This subparagraph is
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2 repealed October 31, 1996, and no further applications
3 for refunds may be accepted.

4 I. Rules adopted pursuant to this subsection are routine
5 technical rules as defined in Title 5, chapter 375,
6 subchapter II-A.'

8 Further amend the bill by inserting at the end before the
9 statement of fact the following:
10

12 **FISCAL NOTE**

14 Certain changes in the regulation of workers' compensation
15 self-insurers will result in insignificant reductions of
16 dedicated revenue to the Bureau of Insurance, within the
17 Department of Professional and Financial Regulation, from
18 application fees.

20 The Bureau of Insurance, within the Department of
21 Professional and Financial Regulation, will incur some minor
22 additional costs to adopt certain rules and to make certain
23 notifications pertaining to workers' compensation
24 self-insurance. These costs can be absorbed within the bureau's
25 existing budgeted resources.'

28 **STATEMENT OF FACT**

30 This amendment does the following: clarifies that the
31 reportable events provision applies to individual self-insurers
32 only; makes the sale of a portion of a business a reportable
33 event if 20% or more of the business is sold; clarifies that the
34 Superintendent of Insurance will prescribe through rulemaking any
35 other events affecting the ownership of the business that must be
36 reported; clarifies some confusing language in the original bill
37 regarding the time for filings; adds a provision that allows the
38 superintendent to request additional information from an
39 applicant for continuing self-insurance authority during the
40 pendency of an application; limits the superintendent's authority
41 to waive a triennial actuarial review to those instances when the
42 number of outstanding claims is not of sufficient volume to
43 permit a credible actuarial analysis; and further explains the
44 provisions related to the option for continuing self-insurance
45 authority and assumption of liabilities.

46
47 The amendment also provides a mechanism for successor
48 employers to apply for a refund or a partial refund of a new
49 member assessment paid to the Maine Self-Insurance Guarantee
50 Association. If such refunds would cause the guarantee fund to

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2 be reduced below its required level of \$2,000,000, the guarantee
association must establish an equitable schedule for payment of
4 the refund to ensure that the fund never goes below \$2,000,000.

4

The amendment adds a fiscal note to the bill.

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