

MAINE STATE LEGISLATURE

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117th MAINE LEGISLATURE

SECOND REGULAR SESSION-1996

Legislative Document

No. 1757

S.P. 688

In Senate, February 6, 1996

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

Submitted by the Department of Professional and Financial Regulation pursuant to Joint Rule 24.

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

A handwritten signature in cursive script that reads "May M. Ross".

MAY M. ROSS
Secretary of the Senate

Presented by Senator MILLS of Somerset.

Cosponsored by Representatives: CAMPBELL of Holden, VIGUE of Winslow.

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

2 **Sec. 1. 24-A MRSA §601, sub-§16, ¶A-1** is enacted to read:

4 A-1. For filing application for authority to self-insure
6 under Title 39-A, section 403, subsection 16, including all
8 documents submitted as part of the application \$500;

10 **Sec. 2. 39-A MRSA §403, sub-§5, ¶A**, as enacted by PL 1991, c.
885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

12 A. Any group of employers may adopt a plan for
14 self-insurance, as a group, for the payment of compensation
16 under this Act to their employees. ~~No~~ A group may not be
18 approved to operate a self-insurance plan in the form of a
20 corporation, partnership or limited liability company.
22 Under a group self-insurance plan the group shall assume the
24 liability of all the employers within the group and pay all
26 compensation for which the employers are liable under this
28 chapter. When the plan is adopted, the group shall furnish
30 satisfactory proof to the Superintendent of Insurance of its
32 financial ability to pay ~~sueh~~ the compensation for the
34 employers in the group and its revenues, their source and
36 assurance of continuance. The superintendent shall require
38 the deposit with the board of such securities as the
40 superintendent determines necessary of the kind prescribed
42 in subsection 9 or the filing of a bond issued by a surety
44 company authorized to transact business in this State, in an
amount to be determined to secure its liability to pay the
compensation of each employer as above provided in
accordance with subsection 9. ~~Sueh~~ The surety bond must be
approved as to form by the superintendent. The
superintendent may also require that any agreements,
contracts and other pertinent documents relating to the
organization of the employers in the group be filed with the
superintendent at the time the application for group
self-insurance is made. The application must be on a form
prescribed by the superintendent. The superintendent has the
authority to deny the application of the group to pay ~~sueh~~
the compensation for failure to satisfy any applicable
requirement of this section. The superintendent shall
approve or disapprove an application within 90 days. The
group qualifying under this paragraph is referred to as a
self-insurer.

46 **Sec. 3. 39-A MRSA §403, sub-§6, ¶B**, as enacted by PL 1991, c.
48 885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

50 B. Each individual self-insured employer, except ~~these~~ an
employer utilizing an actuarially fully funded trust

2 pursuant to subsection 3, is required to obtain an actuarial
3 evaluation of undischarged claims and claims settlement
4 liabilities at least once every 3 years, unless the
5 requirement is waived by the superintendent. This review
6 and evaluation must be performed by a casualty actuary who
7 is a member of the American Academy of Actuaries. Upon
8 approval to self-insure, the Superintendent of Insurance
9 shall indicate the deadline for that self-insurer to
10 complete an actuarial review. In addition to this triennial
11 review, the superintendent may require the reserves and
12 liabilities of a self-insurer to be reviewed and evaluated
13 as often as the superintendent determines necessary.

14 Any self-insurer that develops an imputed annual standard
15 premium not exceeding \$50,000 and demonstrates that it has
16 provided security for its workers' compensation exposures in
17 an amount that is at least 135% of its case-based claims
18 reserves, as evaluated annually, is excused from providing
19 an actuarial evaluation in any year in which these
20 conditions are satisfied. For the purposes of this
21 subsection, "case-based claims reserves" means undischarged
22 claims that have arisen during the period of self-insurance
23 and of which the employer has had formal notice. This
24 exception may not be construed to limit the superintendent's
25 authority to require an actuarial evaluation when the
26 superintendent determines one is necessary.

28 **Sec. 4. 39-A MRSA §403, sub-§8, ¶A,** as amended by PL 1995, c.
29 150, §1, is further amended to read:

30 A. The bond ~~or~~ security deposit or letter of credit
31 required of an individual self-insurer must be at least an
32 amount determined by the following formula or \$50,000,
33 whichever is larger. The bond ~~or~~ security deposit or
34 letter of credit must be in an amount equal to the loss and
35 loss adjustment expense portion of the annual standard
36 premium for the prospective fiscal coverage period or the
37 outstanding loss reserves minus recoveries from all ~~excess~~
38 ~~carriers~~ reinsurance and subrogation reduced to net
39 collections plus 25% of annual standard premiums for the
40 prospective fiscal coverage period, whichever is larger. The
41 ~~percentage-factor-used-to-determine-the-portion-of-annual~~
42 ~~standard-premium-allocated-for-loss-and-loss-adjustment~~
43 ~~expenses--must--be--acceptable--to--the--Superintendent--of~~
44 ~~Insurance.~~ For the purposes of this paragraph, "annual
45 standard premium" is as defined in section 404, subsection 4.

46
47 For individual self-insurers who have a net worth equal to
48 or in excess of \$10,000,000, who have had positive net
49 earnings demonstrated by certified statements of financial
50

2 condition audited by a certified public accountant for at
3 least 3 of the 5 latest fiscal years, including one of the 2
4 most recent years, and whose mean annual earnings for the 5
5 latest fiscal years are at least equal to the normal annual
6 premium for the prospective fiscal coverage period, the
7 minimum security deposit, letter of credit or bond must be
8 an amount determined by the formula in this paragraph or as
adjusted for applicable levels of working capital funds.

10 An employer meeting the standards of this paragraph may
11 deduct from the penal value of its surety bond, from the
12 value of the letter of credit or from the market value of
13 securities deposited an amount not exceeding demonstrated
14 working capital in such current statement of financial
15 condition, ~~the~~. The bond, letter of credit or deposit must
16 be at least \$100,000. An employer organized as a sole
17 proprietorship, partnership or limited liability company is
18 not eligible to deduct its amount of demonstrated working
19 capital from the value of the posted security.

20 Self-insurers that are unable to meet the preceding
21 standards shall deposit acceptable funds, a letter of credit
22 or a surety bond in that amount produced by the formula
23 described in this paragraph ~~written by a corporate surety~~
24 ~~that meets the qualifications prescribed by rules adopted by~~
25 ~~the superintendent~~. The minimum security deposit, letter of
26 credit or bond amount may be adjusted for applicable levels
27 of working capital funds if the self-insurer was eligible to
28 make an alternative election, under Statement of Financial
29 Accounting Standard No. 106, Employers' Accounting for
30 Postretirement Benefits Other Than Pensions, that would have
31 otherwise caused the self-insurer to have both positive net
32 earnings for at least 3 of the 5 latest fiscal years,
33 including one of the 2 most recent years, and mean annual
34 earnings for the 5 latest fiscal years equal to the normal
35 annual premium for the prospective fiscal coverage period.

36
37
38 Within 30 days after notice by the superintendent, the
39 self-insurer shall post the deposit indicated. This deadline
40 may be extended by the superintendent for good cause, but in
41 ~~no event~~ may not exceed one year from the deadline for
42 compliance as stated in the notice given to the self-insurer.

43
44 A bond ~~or~~, security deposit or letter of credit in excess of
45 the amount prescribed by this subsection may be required if
46 the superintendent determines that the self-insurer has
47 experienced a deterioration in financial condition that
48 adversely affects the self-insurer's ability to pay expected
49 losses.

50

2 No A judgment creditor other than claimants for benefits
3 under this Act has does not have a right to levy upon the
4 self-insurer's assets held in deposit pursuant to this
5 paragraph.

6 **Sec. 5. 39-A MRSA §403, sub-§12**, as enacted by PL 1991, c.
7 885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

8 **12. Qualifications for claims personnel.** Persons who
9 investigate, settle or negotiate the settlement of claims on
10 behalf of self-insurers or employees of self-insurers are
11 required to be licensed as insurance adjusters pursuant to Title
12 24-A, chapter 17, subchapters I and IV V.

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

16 **14. Reportable events; termination of self-insurance**
17 **authority; application for continuing self-insurance authority**
18 **and nonrenewal or revocation order.** A self-insurer must report
19 the occurrence of events as required by this subsection. An
20 employer may elect to voluntarily terminate its authority to
21 self-insure at any time or may make application for continuing
22 authority to self-insure subject to the requirements of this
23 subsection and any rules adopted by the Superintendent of
24 Insurance. The superintendent may make a determination that an
25 employer's authority to self-insure has terminated in accordance
26 with this subsection and any rules adopted by the superintendent
27 or may grant approval of an application for continuing
28 self-insurance authority. For the purposes of this subsection,
29 an employer includes a successor employer assuming all workers'
30 compensation liabilities of an approved self-insured employer as
31 a result of the occurrence of one of the events in paragraph A.

32 **A.** In order for the superintendent to make a determination
33 as to whether the occurrence of an event results in a
34 termination of an employer's self-insured plan or results in a
35 need for modification of the terms and conditions of the
36 plan, an approved self-insurer must report any of the
37 following events to the superintendent at least 45 days in
38 advance of the event's occurrence, if known, or no later
39 than 10 days after the event's occurrence, if not known in
40 advance:

41 **(1) The sale of a portion of the business;**

42 **(2) A division of the business;**

43 **(3) A spin-off of the business;**

- 2 (4) A leveraged buyout of the business;
- 4 (5) A reorganization of the business;
- 6 (6) A change in business form;
- 8 (7) An acquisition by or merger of the business with
10 another entity;
- 12 (8) A change in a partnership agreement;
- 14 (9) A change in the membership or managers of a
16 limited liability company;
- 18 (10) Dissolution of a partnership or a limited
20 liability company;
- 22 (11) Cessation of business in the State; or
- (12) Any other event affecting the ownership of the
 business or the structure of the business.

24 If any of these events results in the self-insured
26 corporation, limited liability company, partnership or sole
28 proprietorship ceasing to exist in its present form or
30 otherwise results in a substantial change in the business
32 operations or financial condition of the entity in the
34 State, the employer must notify the superintendent 45 days
36 in advance of the event's occurrence and must notify the
superintendent 30 days in advance whether it elects to
terminate its plan or elects to apply to continue to
self-insure. At the discretion of the superintendent and if
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.

38 B. If a self-insured employer elects to terminate its
40 self-insurance program, or a portion of its program, it must
42 submit written notice and a written termination plan to the
44 Superintendent of Insurance at least 30 days in advance of
46 the proposed termination date. In the event that a
48 self-insurer elects to terminate its approval in this State
without filing a plan acceptable to the superintendent, the
superintendent shall issue an order prescribing the terms
and conditions of the termination. The termination plan
must specify, but is not limited to, procedures for claims
handling, reservation of assets or other security acceptable
to the superintendent to be maintained in the State to
discharge claims liabilities and other obligations under

2 this Act and a description of how ultimate reserves were
3 determined. The termination plan must contain a written
4 agreement that the self-insurer continues to be subject to
5 informational filings respecting changes in ownership,
6 financial condition, and actuarial evaluation of claims,
7 claims expense reserves and loss transfers when determined
8 necessary by the superintendent to ensure that claims are
9 adequately secured. The plan must also comply with the
10 terms and conditions prescribed by rule by the
11 superintendent. To protect the interests of claimants, the
12 superintendent may require a further deposit to be held in
13 trust by the Treasurer of State or may require full funding
14 of workers' compensation liabilities.

15
16 C. If the self-insured employer and any successor employer
17 elect to continue to self-insure after the occurrence of an
18 event in paragraph A, the employer and any successor
19 employer must file notice of intent to continue to
20 self-insure with an application for continuing authority to
21 self-insure. In order to qualify to file for continuing
22 self-insurance authority, any successor employer must assume
23 100% of the liabilities of the predecessor self-insured
24 employer and must show that the business in the State
25 remains substantially the same. The notice of intent to
26 continue to self-insure must be received by the
27 superintendent 30 days prior to the event's occurrence.
28 Within 7 days' of receipt by the superintendent of the
29 notice of intent to continue to self-insure, the employer
30 and any successor employer must provide all information
31 requested by the superintendent to allow the superintendent
32 to make a determination under this section, including an
33 application on a form approved by the superintendent with
34 the application fee as required in Title 24-A, section 601.
35 While the application is pending and during the 30-day
36 period following a denial of an application for continuing
37 self-insurance authority, the employer and any successor
38 employer must maintain the security and reinsurance as
39 required by the employer's certificate of authority, must
40 continue to comply with all other provisions of the
41 employer's certificate of authority and must provide any
42 additional security determined by the superintendent to be
43 necessary under the circumstance. While the application is
44 pending, the self-insurance authority of the employer
45 continues consistent with the terms and conditions of the
46 employer's certificate of authority. Failure to provide the
47 information when requested and failure to comply with the
48 terms and conditions of the employers' certificate of
authority or with any additional conditions prescribed by
the superintendent will result in automatic termination of

2 the employer's authority to self-insure and the issuance of
3 an order by the superintendent that prescribes the terms and
4 conditions of a termination plan.

6 D. The superintendent shall notify the employer in writing
7 within 30 days of receipt of all requested information
8 whether the employer's application for continuing
9 self-insurance authority is approved or denied. The
10 superintendent's notice must specify the reasons for the
11 denial or must specify the terms and conditions for
12 continuing self-insurance authority as prescribed by this
13 section and any rules adopted by the superintendent. In
14 determining whether or not a plan terminates, the
15 superintendent must consider, among other things, whether or
16 not the successor employer has assumed 100% of the workers'
17 compensation liabilities of the employer, whether or not the
18 successor employer qualifies for self-insurance authority
19 pursuant to subsection 3 and whether or not the successor
20 employer maintains substantially the same business
21 operations as the predecessor self-insured employer. The
22 superintendent may also consider, among other things,
23 whether or not the successor employer employs substantially
24 the same number of employees as the predecessor employer.
25 If the superintendent denies the application, the effective
26 date of the termination is 30 days from the date of the
27 superintendent's notice, unless stayed by order of the
28 superintendent. The self-insurer may request a hearing on
29 this decision within 30 days from the date of the notice,
30 but there is no automatic stay of the superintendent's
31 decision. Prior to the effective date of the termination,
32 the employer must file a termination plan consistent with
33 paragraph B. A successor employer may file an application
34 for authority to self-insure workers' compensation
35 obligations pursuant to this section and rules adopted by
36 the superintendent.

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

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

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

22 H. A self-insurer approved by the superintendent to
24 continue self-insurance authority under paragraph D is not
26 subject to assessments as a new member of the Maine
28 Self-Insurance Guarantee Association. The self-insurer is
30 subject to applicable annual assessments or postinsolvency
32 assessments levied by the Maine Self-Insurance Guarantee
34 Association.

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

48 **Sec. 7. 39-A MRSA §404, sub-§2, ¶¶D and E are enacted to read:**

2 D. In determining membership in the association for the
4 purposes of annual postinsolvency assessments, a successor
6 employer approved for continuing self-insurance authority
8 under section 403, subsection 14 or a successor employer
qualifying and receiving a refund under section 403,
subsection 14, paragraph H, subparagraph (1) is deemed to be
a member of the association from the date of the former
employer's initial self-insurance authorization.

10 E. In determining membership in the association for the
12 purposes of annual or postinsolvency assessments, an
14 employer that ceases to be an approved self-insurer under
16 the Act at the time an insolvency occurs or has occurred, or
18 during the 36-month period immediately preceding an
20 insolvency, continues to be a member of the association for
22 the purposes of annual or postinsolvency assessments even if
24 that employer is acquired or merges with another entity,
26 dissolves, ceases to do business in the State or otherwise
28 changes business form resulting in a new legal entity. An
employer qualifying for membership under this paragraph
shall notify the Maine Self-Insurance Guarantee Association
of all changes affecting ownership and provide information
necessary for the association to be able to levy assessments.
In addition to any other remedies provided by law, the
superintendent is authorized to issue an order amending the
terms and conditions of the termination plan of any former
self-insurer in order to enforce this paragraph.

30 **Sec. 8. 39-A MRS §404, sub-§4, ¶A,** as amended by PL 1995, c.
398, §5, is further amended by amending subparagraph (3) to read:

32 (3) Shall administer a fund, to be known as the Maine
34 Self-Insurance Guarantee Fund, which must receive the
36 assessments required in subparagraph (2). ~~Prior to~~
~~December 1, 1992, this fund may not exceed \$1,000,000,~~
~~except that once the fund reaches \$1,000,000, the fund~~
~~may not exceed \$1,000,000 plus all subsequent initial~~
38 ~~assessments of new member self-insurers that are~~
~~required to be made in subparagraph (2), division (f).~~
40 ~~After November 30, 1992, this~~ This fund may not exceed
42 \$2,000,000, except that once the fund reaches
44 \$2,000,000, the fund may not exceed \$2,000,000 plus all
46 subsequent initial assessments of new member
48 self-insurers that are required to be made in
subparagraph (2), division (f) and interest income. In
the event the fund drops below \$2,000,000, and if the
association determines it necessary in order to carry
out the purpose of this section, the association is
authorized to levy annual assessments as required in

2 subparagraph (2) in addition to postinsolvency
3 assessments as required by paragraph C. The costs of
4 administration by the association must be borne by the
5 fund and the association is authorized to secure
6 reinsurance and bonds and to otherwise invest the
7 assets of the fund to effectuate the purpose of the
8 association, subject to the approval of the
9 Superintendent of Insurance.

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;

30 **STATEMENT OF FACT**

31
32 This bill amends the law relative to workers' compensation
33 self-insurers by establishing a procedure to allow authorized
34 self-insurers that experience a change in ownership or business
35 form to file an application for continuing self-insurance
36 authority without filing a new application and without filing a
37 termination plan. The fee for this application is \$500. The fee
38 for a new application is \$1,000. This bill also allows the
39 Superintendent of Insurance to waive the requirement for a
40 triennial actuarial review and corrects errors and
41 inconsistencies.
42

43 This bill further clarifies provisions relative to
44 membership in the Maine Self-Insurance Guarantee Association and
45 payment of assessments. It amends the law to make it clear that
46 a self-insured employer remains liable for Maine Self-Insurance
47 Guarantee Fund assessments even if the entity experiences a
48 change in business ownership or form. It also provides clarity
49 to the law regarding the authority of the Maine Self-Insurance
50

2 Guarantee Association to levy annual assessments in the event it
is necessary to carry out the purpose of the association.