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L.D. 346

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DATE: **4.14.05**

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INSURANCE AND FINANCIAL SERVICES

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**STATE OF MAINE
SENATE
122ND LEGISLATURE
FIRST SPECIAL SESSION**

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COMMITTEE AMENDMENT "**A**" to S.P. 108, L.D. 346, Bill, "An
Act To Amend Group Insurance Funding Requirements"

22 Amend the bill by striking out everything after the enacting
24 clause and before the summary and inserting in its place the
following:

26 'Sec. 1. 39-A MRSA §403, sub-§3, as amended by PL 1999, c.
28 113, §30 and by PL 2001, c. 44, §11 and affected by §14, is
further amended by amending the first blocked paragraph to read:

30 A self-insurer may, with the approval of the Superintendent of
32 Insurance, use the following types of security to satisfy the
self-insurer's responsibility to post security required by the
34 superintendent: a surety bond; an irrevocable standby letter of
credit; cash deposits and acceptable securities; and an
36 actuarially determined fully funded trust. For purposes of this
section, "tangible net worth" means equity less assets that have
38 no physical existence and depend on expected future benefits for
their ascribed value. A- Unless disapproved by the
40 superintendent pursuant to paragraph C, subparagraphs (5) and
(6), a group self-insurer that maintains a trust actuarially
42 funded to the confidence level required by the superintendent may
use an irrevocable standby letter of credit as follows: only in
44 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

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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.

Sec. 2. 39-A MRSA §403, sub-§3, ¶C, as amended by PL 1995, c. 619, §7, is further amended to read:

C. A self-insurer may establish an actuarially determined fully funded trust, funded at a level sufficient to discharge those obligations incurred by the employer pursuant to this Act as they become due and payable from time to time, as long as the Superintendent of Insurance requires that the value of trust assets be at least equal to the present value of ultimate expected incurred claims and claims settlement costs, plus required safety margins and, if determined necessary by the superintendent, administrative costs for the operation of the plan of self-insurance. For the purpose of determining whether an actuarially determined fully funded trust has a surplus of funds in excess of that required by this subsection, the superintendent shall consider, based upon the group's audit for all completed plan years, only the following assets held outside the trust account: cash up to \$10,000; accounts receivable, limited to amounts collected and deposited in the trust account by the date of the surplus distribution; accrued interest on trust account assets that will be collected and deposited in the trust account within 6 months from the date of the surplus determination; tangible assets that will be converted to cash and deposited in the trust account prior to the distribution date of any surplus; and a letter of credit to be used to partially fund the trust to the extent allowed under this section and rules adopted by the superintendent, as supported in the actuarial review. The superintendent shall consider cash held outside the trust account in excess of \$10,000 if the self-insurer provides, to the superintendent's satisfaction, documentation regarding why the money is being held outside the trust account. An actuarially determined fully funded trust must be funded as follows, as determined by the superintendent.

(1) For individual and group self-insurers, the amount of security must be determined based upon an actuarial review. The actuarial review must take into consideration the use by a group self-insurer of any irrevocable standby letter of credit. Except as provided in subparagraph (3), initial funding for each

plan year must be maintained at the 90% or higher confidence level. Funding after the completion of the initial plan year may be established no lower than the 75% confidence level if the following has occurred:

(a) A year considered for reduction is completed;

(b) The supporting actuarial review includes an evaluation of the completed year experience with claims evaluated not less than 6 months from the end of the plan year, or in the case of a group self-insurer in existence for at least 36 months, not less than 4 months from the end of the plan year; and

(c) For individual self-insurers, prior approval from the superintendent is obtained.

For the purposes of determining the confidence level, all completed years at the same confidence level may be aggregated. For individual self-insurers, funds may not be released from the trust or transferred between years except as approved by the superintendent. The governing body of a group self-insurer may at any time declare a surplus of funds above the required confidence level, but may only release funds after the completion of any plan year. The superintendent may request information regarding any such declaration. Any distribution of surplus must be based upon an actuarial review of all outstanding obligations for all completed plan years, an audited financial statement of the group for all completed plan years and a surplus distribution worksheet for all completed plan years on a form approved by the superintendent. The group self-insurer must provide the required information within 10 days after the distribution. Any surplus declared or distributed pursuant to this paragraph is subject to adjustment after review by the superintendent within 60 days of the receipt of the required information. Any deficit below the required confidence level, as determined by the superintendent, that results from a distribution under this paragraph must be funded within 45 days from the date of the notice by the superintendent.

(2) A group self-insurer may elect to fund at a higher confidence level through the use of cash, marketable securities or reinsurance. If a member of a group self-insurer terminates membership in the group for any reason, that member shall fund the member's

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

10 (3) ~~Depending upon the financial condition of the~~
12 ~~self-insurer, and if approved by the superintendent~~
14 Subject to prior approval by the superintendent in
accordance with subparagraph (5), a self-insurer that
16 has successfully maintained an actuarially determined
fully funded trust for a period of 5 or more
18 consecutive years may fund all years, including the
prospective fund year, ~~in the aggregate~~ at the 75% or
higher confidence level in the aggregate and a group
20 self-insurer that has successfully maintained an
actuarially determined fully funded trust for a period
22 of 10 or more consecutive years may fund all years,
including the prospective fund year, at the 65% or
24 higher confidence level in the aggregate.

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

48 (5) In determining whether a self-insurer that
50 maintains an actuarially determined fully funded trust

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2 qualifies for a reduction in the required confidence
3 level pursuant to subparagraph (1) or (3) or is subject
4 to an enhanced confidence level pursuant to
5 subparagraph (6), the superintendent shall consider the
6 financial condition of the self-insurer in relation to
7 the potential workers' compensation liabilities. The
8 factors the superintendent may consider include the
9 self-insurer's liquidity, leverage, tangible net worth,
10 size and net income. For group self-insurers, the
11 superintendent's review must be based on the aggregate
12 financial condition of the group members. At the
13 request of the superintendent, a group self-insurer
14 shall report relevant financial information, on a form
15 prescribed by the superintendent, at such intervals as
16 the superintendent directs. The superintendent may
17 establish additional review criteria or procedures by
18 rule. Rules adopted pursuant to this subparagraph are
19 routine technical rules as defined in Title 5, chapter
20 375, subchapter 2-A.

21 (6) If the superintendent determines, based on an
22 evaluation of a self-insurer's financial condition
23 pursuant to subparagraph (5), that the confidence level
24 at which the self-insurer has been authorized to fund
25 its trust is not sufficient to provide adequate
26 security for the self-insurer's reasonably anticipated
27 potential workers' compensation liabilities, the
28 superintendent shall make a determination of the
29 appropriate confidence level and order the self-insurer
30 to take prompt action to increase funding to that level
31 within 60 days.'

34 **SUMMARY**

36 This amendment replaces the bill. The amendment retains the
37 substance of the bill to provide that a self-insured group
38 workers' compensation trust that has been in existence for 10
39 years may, upon approval of the superintendent, fund at the 65%
40 or higher confidence level. The amendment also establishes
41 criteria for the superintendent's review of a request by an
42 individual or group self-insurer for a reduction in the required
43 confidence level.

46 **FISCAL NOTE REQUIRED**
(See attached)

COMMITTEE AMENDMENT



Approved: 03/25/05 *MAC*

122nd MAINE LEGISLATURE

LD 346

LR1503(02)

An Act To Amend Group Insurance Funding Requirements

Fiscal Note for Bill as Amended by Committee Amendment *A*
Committee: Insurance and Financial Services

Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - Other Special Revenue Funds

Fiscal Detail and Notes

Any additional cost to the Department of Professional and Financial Regulation in implementing this bill can be absorbed utilizing existing resources.