

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWELFTH LEGISLATURE

FIRST REGULAR SESSION

December 5, 1984 to June 20, 1985

Chapters 1-384

PUBLISHED BY THE REVISOR OF STATUTES IN ACCORDANCE WITH
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SUBSECTION 4.

J.S. McCarthy Co., Inc.
Augusta, Maine
1986

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
FIRST REGULAR SESSION

of the
ONE HUNDRED AND TWELFTH LEGISLATURE

1985

CHAPTER 218

H.P. 1041 - L.D. 1516

AN ACT to Change the Law Relating to Liens for Unpaid Property Tax Assessments:

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

36 MRSA §612, sub-§11, as enacted by PL 1983, c. 403, §1, is amended to read:

11. Limitation of this section. The lien authorized by this section shall apply to taxes assessed on and or after April 1, 1984, and shall be limited to individual items of personal property which are assessed more than \$200 in personal property taxes in any one year.

Effective September 19, 1985.

CHAPTER 219

H.P. 557 - L.D. 829

AN ACT Permitting Retention of Loss in Excess of Loss Fund by Group Self-insurers.

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

Whereas, it is essential that group workers' compensation self-insurers remain financially sound in order to protect the group's ability to pay the claims of insured workers; and

Whereas, an integral part of securing the group's financial soundness is the ability to obtain affordable excess insurance coverage to compensate claims in excess of the group's own financial resources; and

Whereas, current conditions in the insurance market are leading insurers to raise prices for excess coverage to group self-insurers; and

Whereas, these conditions make it difficult for a group to afford this coverage unless a mechanism is available to enable the group self-insurer to dedicate a portion of its unimpaired surplus to increase its self-insured retention level under such a policy; and

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

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

39 MRSA §23, sub-§4, as amended by PL 1983, c. 303, is further amended to read:

4. Group self-insurance.

B. Any group of employers may adopt a plan for self-insurance, as a group, for the payment of compensation under this chapter to their employees. Under such plan the group shall assume the liability of all the employers within the group and pay all compensation for which the said employers are liable under this chapter. Where such plan is adopted the group shall furnish satisfactory proof to the superintendent of its financial ability to pay such compensation for the employers in the group, its revenues, their source and assurance of continuance. The superintendent shall require the deposit with the Workers' Compensation Commission of such securities as may be deemed necessary of the kind prescribed in paragraphs A to E or the filing of a bond of a surety 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 paragraph E. Such surety bond must be approved as to form by the superintendent. The superintendent may also require that any and all agreements, contracts and other pertinent documents relating to the organization of the employers in the group shall be filed with him at the time the application for group self-insurance is made. Such application shall be on a form prescribed by the superintendent. The superintendent shall have the authority to deny the application of the group to pay such compensation or to revoke his consent

furnished under this section at any time for good cause shown. The group qualifying under this paragraph shall be known as a self-insurer.

C. An employer participating in group self-insurance shall not be relieved from the liability for compensation prescribed by this chapter, except by the payment thereof by the group self-insurer or by himself. As between the employee and the group self-insurer, notice to or knowledge of the occurrence of the injury on the part of the employer shall be deemed notice or knowledge, as the case may be, on the part of the group self-insurer; jurisdiction of the employer shall, for the purpose of this chapter, be jurisdiction of the group self-insurer and the group self-insurer shall in all things be bound by and subject to the orders, findings, decisions or awards rendered against the participating employer for the payment of compensation under this chapter. The insolvency or bankruptcy of a participating employer shall not relieve the group self-insurer from the payment of compensation for injuries or death sustained by an employee during the time the employer was a participant in the group self-insurance. The group self-insurer shall promptly notify the superintendent and the Workers' Compensation Commission, on a prescribed form, of the addition of any participating employer or employers. The approval of the Superintendent of Insurance shall not be necessary in order to add participating employers to the group self-insurer. Notice of termination of a participating employer shall not be effective until at least 10 days after notice of that termination, on a prescribed form, has been either filed in the office of the superintendent and the Workers' Compensation Commission or sent by registered mail. The group self-insurer shall give notice of the termination of any participating member to all other participating members at least quarterly each year. Written notice shall be given to any new participating member at the time of admission that the specific membership of the group and its members as prescribed in this section shall not be affected by the group's failure to provide its members with prior or immediate notice of changes in the membership of the group if notice is given at least quarterly, provided that the termination or admission of members was effected in compliance with all group agreements and bylaws and in compliance with this section and the rules adopted thereunder.

D. Each group self-insurer, in its application for self-insurance, shall set forth the names and addresses of each of its officers, directors, trustees and general manager. Notice of any change in the officers, directors, trustees or general manager shall be given to the superintendent and the Workers' Compensation Commission within 10 days thereof. No officer, director, trustee or employee of the group self-insurer may represent or participate directly or indirectly on behalf of an injured worker or his dependents in any workers' compensation proceeding. All employees of employers participating in group self-insurance shall be and are deemed to be included under the group self-insurance plan.

E. If for any reason, the status of a group self-insurer under this paragraph is terminated, the securities or the surety bond on deposit referred to herein shall remain in the custody of the Workers' Compensation Commission for a period of at least 26 months. At the expiration of such time or such further period as the superintendent may deem proper and warranted, he may accept in lieu thereof, and for the additional purpose of securing such further and future contingent liability as may arise from prior injuries to workers and be incurred by reason of any change in the condition of such workers warranting the board making subsequent awards for payment of additional compensation, a policy of insurance furnished by the group self-insurer, its successor or assigns or other carrying on or liquidating such self-insurance group. Such policy shall be in a form approved by the Superintendent of Insurance and issued by the state fund or any insurance company licensed to issue this class of insurance in this State. It shall only be issued for a single complete premium payment in advance by the group self-insurer. It shall be given in an amount to be determined by the superintendent and when issued shall be noncancellable for any cause during the continuance of the liability secured and so covered.

F. The Superintendent of Insurance may provide for the administration of this section relating to self-insurance in the manner prescribed in Title 24-A, section 212.

G. If an employer is a partnership, or a sole proprietorship, and is a member of a self-insurance group associated pursuant to this sec-

tion, such employer may elect to include as an "employee" any member of such partnership, or owner of such sole proprietorship, for purposes of obtaining workers' compensation coverage under this Act. In the event of such election, the electing employer shall serve upon the group self-insurance association written notice naming the partner or sole proprietor to be covered, and no election shall be deemed to have been made within this Act until such notice has been given. By making such an election, the partnership member or sole proprietor shall be deemed to have stipulated that for premium payment purposes the weekly salary or wage of such electing partnership member or sole proprietor is \$200 per week.

H. Fee schedules applicable to group self-insurers are those set forth in Title 24-A, section 601.

J. Each group self-insurer shall record its loss expense and experience in accordance with Title 24-A, section 2323.

K. Special study of the Superintendent of Insurance.

(1) The Superintendent of Insurance is directed to conduct a study to determine the effect of group self-insurers authorized pursuant to this chapter upon the workers' compensation insurance plan. The superintendent is directed to form a special committee to assist in this study.

(2) The special committee shall consist of 2 members representing each of the following groups who shall be appointed by the superintendent:

- (a) Workers' compensation insurers;
- (b) Group self-insurers;
- (c) Labor; and
- (d) The public.

(3) The study may not commence until 2 years following initial authorization of a group self-insurer pursuant to this chapter.

(4) Each insurer and group self-insurer providing workers' compensation coverage

during the calendar year in which the study commences shall be assessed a fee not to exceed \$100. These assessments shall be used for the purpose of conducting the study.

(5) Following completion of the study, the superintendent shall report to the Governor and the Legislature. The report shall contain his findings as to the impact of group self-insurance on the workers' compensation insurance plan and his recommendations for additional legislation.

L. Annual examinations of each group self-insurer, as required by the superintendent, shall be performed by public accountants acceptable to the superintendent and reports rendered to the superintendent within a reasonable period, as determined by the superintendent subsequent to the group self-insurers elected fiscal year. The examinations shall be conducted pursuant to generally accepted accounting principles, as they are consistent with precepts prescribed by the superintendent, which place sound values on assets and liabilities of group self-insurers. Other examinations of the affairs, transactions, accounts, records and assets of each group self-insurer and of any person as to any matter relevant to the financial affairs of the group self-insurer shall be conducted as often as the superintendent deems advisable. The expense of examination of a group self-insurer shall be borne by the person examined.

M. In any fiscal year, no group self-insurer may be required to obtain aggregate excess insurance with a policy limit that exceeds a multiple of 1.5 of its annual standard workers' compensation premium for that fiscal year. The superintendent may set lower policy limits for aggregate excess insurance where, in his judgment, lower limits may be prudent.

N. Upon approval by the superintendent, a group self-insurer may dedicate a portion of its unimpaired surplus to increase its self-insured retention level under the aggregate excess insurance policy by an amount equal to the amount of surplus so dedicated. The superintendent before granting his approval shall consider among other factors:

(1) The level of alternate revenues available to the group self-insurer to cover the further assumed costs; and

(2) The adequacy of the fund's surplus to meet obligations of the group self-insurer.

At the expiration of a period of 10 calendar days after the superintendent has received a plan for the dedication of a portion of the unimpaired surplus of a group self-insurer to increase its self-insured retention level and any additional information the superintendent has deemed necessary, the plan shall be deemed approved unless prior to the expiration of that time period it has been affirmatively approved or disapproved by the superintendent.

O. In addition, upon the filing of a plan which meets the approval of the superintendent, group self-insurers may be authorized to issue subordinated loan certificates, the proceeds of which shall be made part of the group self-insurer's surplus account and available as other surplus funds for dedication to increase the self-insured retention level. To the extent that the proceeds of these loan certificates are utilized by a group self-insurer to increase its self-insured retention in any fiscal year, the aggregate proceeds of the loan certificates so utilized shall in no event exceed 25% of the annual standard premium for that fiscal year. The obligation to redeem these loan certificates after the proceeds of the loan certificates have been dedicated to increase the aggregate excess self-insured retention level of the group self-insurer shall be subordinate to covered claims and shall not be redeemed after the dedication without the approval of the superintendent.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

Effective May 29, 1985.

CHAPTER 220

H.P. 819 - L.D. 1160

AN ACT to Amend the Maine Lemon Law.