

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
MAINE REVISED STATUTES ANNOTATED, TITLE 3, SECTION 163-A,
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

construction or renovation payable to the State, to be recovered in a civil action.

Effective September 19, 1985.

CHAPTER 371

H.P. 215 - L.D. 249

AN ACT Relating to the Maine Self-Insurance Guarantee Association.

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

Sec. 1. 39 MRSA §23, sub-§7-A is enacted to read:

7-A. Form of excess contracts. All primary excess insurance contracts issued or renewed after the effective date of this subsection shall name the self-insurer and the Maine Self-Insurance Guarantee Association as coinsureds to the extent of their respective interests. These excess contracts shall recognize the Maine Self-Insurance Guarantee Association's rights of recovery, within the terms of coverage provided by the contract, for payments made by the association to or on behalf of claimants regarding covered claims and for claims in the course of settlement, the value of which when reduced to payments will create an obligation on the part of the excess carrier to reimburse the association to the extent of funds disbursed by the association to discharge covered claims. The requirements of this subsection shall apply to any excess contract issued to any individual or group self-insurer as part of a self-insurance program approved for use within this State and shall be in addition to any other requirement applicable to excess contracts imposed by law or rule.

Excess insurance contracts shall further specify that the excess carrier and the Maine Self-Insurance Guarantee Association may enter into agreements on the terms of settlement and distribution of benefits accruing to claimants within the limits of the authority of the parties to make settlements with respect to any coverage year.

To the extent that the Maine Self-Insurance Guarantee Association succeeds to a recovery of benefits from any excess carrier on behalf of claimants, those benefits shall be timely disbursed by the association to or on behalf of claimants as they become due and payable pursuant to this Act. Funds recovered under primary excess contracts on behalf of claimants shall be applied consistent with the terms of coverage under the contract, to loss, loss adjustment expense and attorneys' fees which are payable under the Act.

Sec. 2. 39 MRSA §23-A, sub-§1, as amended by PL 1983, c. 649, §1, is further amended to read:

1. Created. There is created a Maine Self-Insurance Guarantee Association to provide mechanisms for the payment of covered claims under self-insurance coverage, to avoid excessive delay in payment, to avoid financial loss to claimants because of the insolvency of a self-insurer and to assist in the detection and prevention of self-insurer insolvencies, when called upon to do so by the superintendent, in the detection of self-insurer insolvencies. It is declared that the Maine Self-Insurance Guarantee Association is an instrumentality of the State, provided that the debts and liabilities of the association shall not constitute debts and liabilities of the State.

Sec. 3. 39 MRSA §23-A, sub-§4, ¶A, as amended by PL 1981, c. 637, §§5 and 6, is further amended to read:

A. The association shall:

(1) Obtain from each member and file with the superintendent individual reports specifying the aggregate benefits each member paid during the previous calendar year, and the annual standard premium which would have been paid by each self-insurer during the previous calendar year pursuant to manual rates established by the principal rating organization in the State and using the experience rating procedure approved by the Superintendent of Insurance for that self-insurer. These reports shall be due on or before July 15th following the close of that calendar year, except that this deadline may be extended by the superintendent for up to 3 additional months for good cause shown;

(2) Assess each member of the association as follows:

(a) Each individual self-insurer shall be annually assessed an amount equal to 1% of the annual standard premium which would have been paid by that individual self-insurer during the prior calendar year; payment to the association shall be made no later than September 15th following the close of that calendar year. Where any such assessment is paid based in whole or in part upon estimates of annual standard premium for the prior calendar year, there shall be made in the next year's assessment an adjustment of the assessment of such prior year based on actual audited annual standard premium. Regardless of the size of the fund referred to in subparagraph (3), during its first 12 months of membership, no individual self-insurer may discount or reduce this 1% assessment;

(b) Each group self-insurer shall be annually assessed an amount equal to .1% of the total annual standard premium which would have been paid by all the members of that group self-insurer during the prior calendar year; payment to the association shall be no later than September 15th following the close of that calendar year. Where any such assessment is paid based in whole or in part upon estimates of annual standard premium for the prior calendar year, there shall be made in the next year's assessment an adjustment of the assessment of such prior year based on actual audited annual standard premium. Regardless of the size of the fund referred to in subparagraph (3), during its first 12 months of membership, no group self-insurer may discount or reduce this .1% assessment;

(c) Each member self-insurer shall be notified of the assessment no later than 30 days before it is due;

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

(e) If application of the contribution rates referred to in divisions (a) and (b) would produce an amount in excess of the limits of the fund established in subparagraph (3) an equitable proration shall be made;

(3) Administer a fund, to be known as the Maine Self-Insurance Guarantee Fund, which shall receive the assessments required in subparagraph (2). This fund shall not exceed \$1,000,000, except that once the fund reaches \$1,000,000, the fund shall not exceed \$1,000,000 plus all subsequent initial assessments of new member self-insurers which are required to be made in subparagraph (2), divisions (a) and (b). The costs of administration by the association shall be borne by the fund, and the association is authorized to secure reinsurance and bonds and to otherwise invest the assets of the fund to effectuate the purpose of the association, subject to the approval of the Superintendent of Insurance.

(a) The association may purchase primary excess insurance from an insurer licensed in this State for the appropriate lines of authority to defray its exposure to loss occasioned by the default of one or more of its members. Any excess insurance so purchased shall be limited to coverage of post-assessment liability of the association's members and the association shall fund any such purchase by levying a special assessment on its members for this purpose or by application of any unencumbered funds available but which have not been raised by imposition of any preassessment or post-assessment. The association may obtain from each member any information it may reasonably require in order to facilitate the securing of this primary excess insurance. The association shall establish reasonable safeguards designed to ensure that information so received is used only for this purpose and is not otherwise disclosed;

(4) Be obligated to the extent of covered claims occurring prior to the determination

of the self-insurer's insolvency, or occurring after such determination but prior to the obtaining of workers' compensation insurance as otherwise required under this Title by the self-insurer. Nothing in this section shall obligate the association to pay claims against a self-insurer which are not or have not been paid as a result of a determination of insolvency or the institution of bankruptcy or receivership proceedings which occurred prior to the effective date of this section.

(a) "Covered claim" means an unpaid claim against an insolvent self-insurer which relates to an injury which occurs while the self-insurer is a member of the association and which is compensable under this Act;

(5) After paying any claim resulting from a self-insurer's insolvency, the association shall be subrogated to the rights of the injured employee and dependents and shall be entitled to enforce liability against the self-insurer by any appropriate action brought in its own name or in the name of the injured employee and dependents;

(6) Assess the fund in an amount necessary to pay:

(a) The obligations ~~fe~~ for the association under this section subsequent to an insolvency;

(b) The expenses of handling covered claims subsequent to an insolvency;

(c) The costs of examinations under subsection 8; and

(d) Other expenses authorized by this subchapter;

(7) Investigate claims brought against the association and adjust, compromise, settle and pay covered claims to the extent of the association's obligation and deny all other claims. The association may review settlements to which the insolvent self-insurer was a party to determine the extent to which such settlements may be properly contested;

(8) Notify such persons as the superintendent directs under subsection 7;

(9) Handle claims through its employees or through one or more self-insurers or other persons designated as servicing facilities. Designation of a servicing facility is subject to the approval of the superintendent, but designation of a member self-insurer as a servicing facility may be declined by such self-insurer;

(10) Reimburse each servicing facility for obligations of the association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the association; and

(11) Pay the other expenses of the association authorized by this section.

(a) Establish in the plan of operation a mechanism to calculate the assessments required by subparagraphs (1), (2) and (3) by a simple and equitable means to convert from policy or fund years which are different from a calendar year.

Sec. 4. 39 MRSA §23-A sub-§10, as enacted by PL 1981, c. 484, §8, is amended to read:

10. Immunity. There shall be no liability on the part of and no cause of action of any nature shall ~~may~~ arise against any member self-insurer, the association or its agents or employees, the board of directors or its individual members, or the superintendent or his representatives for any ~~action~~ acts or omissions taken by them in the performance of their powers and duties under this subchapter. The immunity established by this subsection shall not extend to willful neglect or malfeasance which would otherwise be actionable.

Sec. 5. 39 MRSA §23-A, sub-§12, as enacted by PL 1981, c. 484, §8, is repealed and the following enacted in its place;

12. Stay of proceedings. All proceedings under this Act to which the insolvent insurer is a party either before the commission or a court in this State and the running of all time periods against either the insolvent self-insurer or the Maine Self-

Insurance Guarantee Association under this Act shall be stayed for 60 days from the date of notice to the Maine Self-Insurance Guarantee Association of the insolvency in order to permit the association to investigate, prosecute or defend properly any petition, claim or appeal under this Act, provided that the payment of weekly compensation for incapacity under section 54 or 55 is made whenever time periods or proceedings affecting the payment of weekly compensation are stayed.

Effective September 19, 1985.

CHAPTER 372

H.P. 1127 - L.D. 1634

AN ACT to Improve the Workers' Compensation System and Reform the Rate-making Process.

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

Whereas, the State has recognized the public benefit resulting from requiring employers within the State to provide compensation for their employees' work-related injuries but the costs to Maine employers for providing that compensation have become prohibitively high, discouraging investment in Maine businesses and the location of new business in the State; and

Whereas, the prompt restriction of rising workers' compensation costs to employers in the State is necessary to maintain the competitiveness of Maine business and industry and to thereby preserve jobs and stimulate the creation of new employment opportunities in the State; and

Whereas, the State has a high rate of occupational injury and disability and there is an immediate need for comprehensive programs to provide for greater safety education and training and for low interest loans to business to improve safety and promote healthful working conditions in Maine's factories, workshops and workplaces; and

Whereas, the Legislature recognizes that one of the primary purposes of workers' compensation should