

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND THIRTEENTH LEGISLATURE
FIRST REGULAR SESSION

December 3, 1986 to June 30, 1987

Chapters 1-542

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

Twin City Printery
Lewiston, Maine
1987

PUBLIC LAWS

OF THE

STATE OF MAINE

AS PASSED AT THE
FIRST REGULAR SESSION
of the
ONE HUNDRED AND THIRTEENTH LEGISLATURE
1987

§160-A. Limited partnership as entity

A limited partnership may sue and be sued in its own name.

Sec. 2. 31 MRSA §290-A is enacted to read:

§290-A. Partnership as entity

A partnership may sue and be sued in its own name.

Effective September 29, 1987.

CHAPTER 93

H.P. 773 — L.D. 1036

**AN ACT to Amend the Election Laws Regarding
Persons Incarcerated in Correctional
Facilities.**

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

21-A MRSA §112, sub-§14 is enacted to read:

14. Persons incarcerated in correctional facilities. The residence of a person incarcerated in a correctional facility, as defined in Title 34-A, section 1001, does not include the municipality where a person is incarcerated unless the person had resided in that municipality prior to incarceration.

A person incarcerated in a correctional facility may apply to register to vote in any municipality where that person has previously had a fixed habitation and to which he intends to return.

Effective September 29, 1987.

CHAPTER 94

H.P. 113 — L.D. 138

**AN ACT Clarifying Municipal Home Rule
Authority as it Relates to Shoreland Areas.**

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

Sec. 1. 38 MRSA §435, 3rd ¶, as enacted by PL 1985, c. 737, Pt. A, §110, is amended to read:

Notwithstanding Pursuant to municipal home rule authority and notwithstanding the definition of shoreland areas in this section, the jurisdiction of municipal shoreland zoning ordinances may include any structure built on, over or abutting a dock, wharf, pier or other structure extending beyond the normal high water mark

of a water body. Municipalities may enact restrictions on that structure. Nothing in this paragraph may be construed to permit a municipality to regulate, under this chapter, a structure which is located more than 250 feet above the normal high water mark.

Sec. 2. 38 MRSA §435, as amended by PL 1985, c. 737, Pt. A, §110, is further amended by adding at the end a new paragraph to read:

All existing municipal ordinances dealing with the subjects of this section currently in effect and operation on April 18, 1986, are declared to be valid and shall continue in effect until rescinded, amended or changed according to municipal ordinance, charter or state law.

Effective September 29, 1987.

CHAPTER 95

S.P. 412 — L.D. 1270

**AN ACT to Amend the Requirements for
Individual Public Self-insurers under
the Workers' Compensation Act.**

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

Sec. 1. 39 MRSA §23, sub-§2, as amended by PL 1985, c. 779, §85, is further amended to read:

2. Proof of solvency and financial ability to pay; trust. By furnishing satisfactory proof to the Superintendent of Insurance of his solvency and financial ability to pay the compensation and benefits, and deposit cash, satisfactory securities or a security bond, with the Workers' Compensation Commission, in such sum as the superintendent may determine pursuant to subsection 6; such bond to run to the Treasurer of State and his successor in office, and to be conditional upon the faithful performance of this Act relating to the payment of compensation and benefits to any injured employee. In case of cash being deposited, it shall be placed at interest by the Treasurer of State, and the accumulation of interest on said cash or securities so deposited shall be paid to the employer depositing the same. The superintendent may at any time, upon not less than 3 days notice and following hearing, for cause deny to an employer the right to continue in the exercise of the option granted by this section.

As an alternative to the method described in the first paragraph of this subsection, an eligible employer may establish an actuarially 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, provided that the value of trust assets shall be at least equal to the present value of such incurred claims. The trust asset shall consist of cash or marketable securities of a type and risk charac-

ter as specified in subsection 7, and shall have a situs in the United States. In all other respects, the trust instrument, including terms for certification, funding, designation of trustee and pay out shall be as approved by the superintendent; provided, that the value of the trust account shall be actuarially calculated at least annually and adjusted to the required level of funding. For purposes of this paragraph, an "eligible employer" is one who is found by the superintendent to be capable of paying compensation and benefits required by this Act and:

- A. Has positive net earnings; or
- B. Can demonstrate a level of working capital adequate to its operating needs.

Notwithstanding any provision of this section or chapter, any bond or security deposit required of a public employer which is a self-insurer shall not exceed \$50,000, provided that such public employer has ~~a net worth equal to or in excess of \$25,000,000~~ and a state-assessed valuation equal to or in excess of \$300,000,000 and either a bond rating equal to or in excess of the 2nd highest standard as set by a national bond rating agency or a net worth equal to or in excess of \$25,000,000. If a county, city or town relies upon a bond rating, it shall value or cause to be valued its unpaid workers' compensation claims pursuant to sound accepted actuarial principles. This value shall be incorporated in the annual audit of the county, city or town together with disclosure of funds appropriated to discharge incurred claims expenses. "Public employer" includes the State, the University of Maine System, counties, cities and towns.

In his consideration of a self-insuring entity's application for authorization to operate a plan of self-insurance, the superintendent may require or permit an applicant to employ valid risk transfer by the utilization of primary excess insurance. Standards respecting the application of primary excess insurance shall be contained in a regulation promulgated by the superintendent pursuant to the Maine Administrative Procedure Act, Title 5, chapter 375. Primary excess insurance shall be defined as insurance covering workers' compensation exposures in excess of risk retained by a self-insurer.

Sec. 2. 39 MRSA §23, sub-§2-A, as amended by PL 1983, c. 668, §2, is further amended to read:

2-A. Group self-insurers; application. Except for the provision relating to individual public employer self-insurers, subsection 2 shall be equally applicable in all respects to group self-insurers. Any employer or group of employers desiring to become a self-insurer shall submit to the Superintendent of Insurance with an application for self-insurance, in a form prescribed by the superintendent the following:

- A. A payroll report for each participating employer of the group for 3 preceding annual fiscal periods;
- B. A report of compensation losses incurred, pay-

ments plus reserves, by each participating employer of the group for the corresponding 3 annual periods;

C. A sworn itemized statement of the group's assets and liabilities; satisfactory proof of financial ability to pay compensation for the employers participating in the group plan; the group's reserves, their source and assurance of continuance;

D. A description of the safety organization maintained by the employer or group for the prevention of injuries;

E. A statement showing the kind of operations performed or to be performed; and

F. Any and all agreements, contracts or other pertinent documents relating to the organization of the employers in the group.

If, upon examination of the sworn financial statement and other data submitted, the superintendent is satisfied as to the ability of the employer or group to make current compensation payments and that the employer's or group's tangible assets make reasonably certain the payment of all obligations that may arise under the Workers' Compensation Law Act, the application shall be granted subject to the terms and conditions setting out the exposure of cash deposits or securities or an acceptable surety bond, all as required by the superintendent. Security against shock or catastrophe loss shall be provided either by depositing securities with the Workers' Compensation Commission in such amount as the superintendent may determine, or by filing with the superintendent and the Workers' Compensation Commission an insurance carrier's certificate of a standard self-insurer's primary excess contract issued to the self-insurer or group in form approved by the superintendent, providing coverage against losses arising out of one injury in such amounts as the superintendent may determine, or a combination of the foregoing, satisfactory to the superintendent. Notwithstanding any provision of this section or chapter, no specific or aggregate excess insurance ~~shall~~ may be required of any individual public employer who is self-insured and has ~~a net worth equal to or in excess of \$25,000,000~~ and a state-assessed valuation equal to or in excess of \$300,000,000 and either a net worth equal to or in excess of \$25,000,000 or has a bond rating equal to or in excess of the 2nd highest standard as set by a national bond rating organization, provided that if the self-insurer relying on a bond rating is a county, city or town it shall value or cause to be valued its unpaid workers' compensation claims pursuant to sound accepted actuarial principles. This value shall be incorporated in the annual audit of the county, city or town together with disclosure of funds appropriated to discharge incurred claims expenses.

Yearly reports in a form prescribed by the superintendent shall be filed by each self-insurer or group. The superintendent may, in addition, require the filing of quarterly financial status reports whenever he has rea-

son to believe that there has been a deterioration in the financial condition of either an individual or group self-insurer which adversely affects the individual's or group's ability to pay expected losses. ~~Said~~ The reports shall be filed within 30 days after the superintendent's request, or at such time as the superintendent shall otherwise set.

After approving any application for self-insurance, the superintendent shall promptly notify the Workers' Compensation Commission and forward to it copies of the application and all supporting materials.

Sec. 3. 39 MRSA §23-A, sub-§2, as amended by PL 1981, c. 637, §3, is further amended to read:

2. Created; legal entity. There is created a ~~non-profit nonprofit unincorporated~~ legal entity to be known as the Maine Self-Insurance Guarantee Association. All self-insurers, as defined in this Title, shall be and remain members of the association as a condition of authority to self-insurer in this State, except that all of public employers which are individual self-insurers, with a ~~net worth equal to or in excess of \$25,000,000~~ and in the case of counties, cities and towns, a state-assessed valuation equal to or in excess of \$300,000,000 and either has ~~net worth equal to or in excess of \$25,000,000~~ or has a bond rating equal to or in excess of the 2nd highest standard as set by a national bond rating organization shall not be subject to this subsection. However, if a self-insurer relying on a bond rating is a county, city or town, it shall value or cause to be valued its unpaid workers' compensation claims pursuant to sound accepted actuarial principles. This value shall be incorporated in the annual audit of the county, city or town together with disclosure of funds appropriated to discharge incurred claims expenses. The association shall perform its functions under a plan of operation established or amended, or both, and approved by the superintendent and shall exercise its powers through the board of directors established in this section.

A. A self-insurer shall be deemed to be a member of the association for purposes of another self-insurer's insolvency, as defined in subsection 6, when:

- (1) The self-insurer is a member of the association when an insolvency occurs, ~~or;~~ or
- (2) The self-insurer has been a member of the association at some point in time during the 12-month period immediately preceding the insolvency in question.

B. A self-insurer shall be deemed to be a member of the association for purposes of its own insolvency when:

- (1) The self-insurer is a member of the association when the insolvency occurs, but claims relating to a compensable event which occurred prior to the date the self-insurer joined the association are not

included hereunder; or

(2) The self-insurer becomes insolvent after leaving the association, but claims relating to a compensable event which occurred prior to the date the self-insurer joined the association are not included hereunder, and claims relating to a compensable event which occurred after the self-insurer ceased to be an approved self-insurer are not to be afforded coverage hereunder.

C. In determining the membership of the association pursuant to paragraphs A and B for any date after January 1, 1983, no employer claiming self-insurer status may be deemed to be a member of the association on any date after January 1, 1983, unless that employer is at that time registered as a self-insurer by the superintendent pursuant to section 23, subsection 11.

Effective September 29, 1987.

CHAPTER 96

H.P. 71 — L.D. 74

AN ACT Concerning the Approval of Voting Devices.

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

Sec. 1. 21-A MRSA §810 is enacted to read:

§810. Approval of voting devices

The Secretary of State may adopt rules governing the type of voting devices and voting systems, as defined in section 841, to minimize the cost of producing ballot materials.

Voting devices approved and recommended pursuant to these rules may be used by any municipality in a state election. A municipality may use other approved voting devices which are not recommended, but, if the cost of ballot materials for these devices exceeds the Secretary of State's estimated cost of preparing paper ballots for that municipality, the municipality shall reimburse the State for the difference in that cost.

The Secretary of State shall publish, biennially in the odd-numbered years, the list of approved voting devices, including the estimated amount a municipality may have to reimburse the State if devices which are not recommended are used.

This section applies only to those voting devices in use by the municipality after October 1, 1987.

Sec. 2. 21-A MRSA §841, sub-§6, as enacted by PL 1985, c. 161, §6, is amended to read: