MAINE STATE LEGISLATURE

The following document is provided by the

LAW AND LEGISLATIVE DIGITAL LIBRARY

at the Maine State Law and Legislative Reference Library

http://legislature.maine.gov/lawlib

Reproduced from scanned originals with text recognition applied

(searchable text may contain some errors and/or omissions)

LAWS

OF THE

STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND FOURTEENTH LEGISLATURE

FIRST REGULAR SESSION

December 7, 1988 to July 1, 1989

Chapters 1 - 502

THE GENERAL EFFECTIVE DATE FOR
NON-EMERGENCY LAWS IS
SEPTEMBER 30, 1989

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

J.S. McCarthy Company
Augusta, Maine
1989

PUBLIC LAWS

OF THE

STATE OF MAINE

AS PASSED AT THE

FIRST REGULAR SESSION

of the

ONE HUNDRED AND FOURTEENTH LEGISLATURE

1989

Sec. 6. 24-A MRSA §2371, sub-§10, as enacted by PL 1987, c. 559, Pt. A, §4, is repealed and the following enacted in its place:

10. Claims covered. This section shall apply to all claims occurring on or after January 1, 1989; to all death, permanent total and major permanent partial claims occurring between January 1, 1987 and December 31, 1988; and to a reasonable sample, as approved by the superintendent, of all other indemnity claims occurring between January 1, 1987 and December 31, 1988. The superintendent may suspend the reporting requirements of specific items for periods when information which is to be obtained from the Workers' Compensation Commission is temporarily unavailable from that commission.

Sec. 7. 24-A MRSA §2372, sub-§1, as enacted by PL 1987, c. 559, Pt. A, §4, is amended to read:

1. Applicability. Each insurer with direct written premium of 1% or more of the total workers' compensation market shall submit a quarterly report, as described in this section, to the superintendent. The superintendent may amend the reporting to an annual basis as the policy year experience matures.

Sec. 8. 39 MRSA §52, as amended by PL 1987, c. 559, Pt. B, §§19 and 20, is further amended by adding at the end 2 new paragraphs to read:

The Superintendent of Insurance shall prescribe medical and health care expense forms for the purpose of collecting information as required by Title 24-A, section 2371. An insurer or self-insurer may withhold payment of medical and health care fees to any provider who fails to complete and submit the prescribed form. In the event the provider fails to properly complete and submit the prescribed form or to follow any fee schedule approved by the commission, the insurer or self-insurer is not required to file a notice of controversy but may simply notify the provider of the failure. In the case of a dispute, any interested party may petition the commission to resolve the dispute.

No claimant may incur liability for the cost of any provided medical or health care services resulting from a provider's failure to comply with this section.

Sec. 9. 39 MRSA §107, as amended by PL 1987, c. 559, Pt. B, §47, is repealed and the following enacted in its place:

§107. Information from insurance companies

1. Completion of forms. Every insurance company insuring employers under this Act shall fill out any blanks and answer all questions submitted that may relate to policies, premiums, amount of compensation paid and such other information as the commission or the Superintendent of Insurance may determine important, either for the proper administration of this Act or for statistical purposes.

2. Explanation of reserving policy. Every insurance company subject to Title 24-A, section 2363 shall, not later than 30 days after filing its annual statement, file with the superintendent a detailed explanation of its reserve policy in regard to claims under this chapter, including specific reserve guidelines.

See title page for effective date.

CHAPTER 435

H.P. 473 - L.D. 638

An Act to Amend the Workers' Compensation Self-insurance Law

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

Sec. 1. 24-A MRSA §601, sub-§16, as enacted by PL 1979, c. 658, §1, is amended to read:

16. Self-insurance authorization. Fees applicable to each self-insurer, individual or group, seeking authorization or authorized to operate a workers' compensation self-insurance plan.

A. For filing application for initial authorization, including all documents submitted as part of the application	$300
B. Authorization and each annual continuation	100
C. Filing yearly report of ~~group~~ self-insurer	50

If a self-insurer terminates its plan or otherwise does not continue to self-insure, the fee applicable to filing of yearly reports shall apply to that period in which the making of these reports is mandated.

Sec. 2. 39 MRSA §23, sub-§2, as amended by PL 1987, c. 559, Pt. B, §15-A, 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~~ surety 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~~ the Treasurer of State's 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 or securities being deposited, ~~it~~ the cash or securities shall be placed in an account at interest by the Treasurer of State, and the accumulation of interest on ~~said~~ the cash or securities so deposited shall be ~~paid~~ credited to the account and shall not be paid to the employer ~~depositing the same~~ to the extent that the interest is required to support any present value discounting in the determination of the amount of the deposit. ~~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.~~ Any security deposit shall be held by the Treasurer of State in trust for the benefit of the self-insurer's employees for the purposes of making payments under the Act.

The superintendent shall prescribe the form of the surety bond which may be used to satisfy, in whole or in part, the employer's responsibility under this section to post security. The bond shall be continuous, shall be subject to nonrenewal only upon not less than 60 days' notice to the superintendent and shall cover payment of all present and future liabilities incurred under the Act while the bond is in force and cover payments which become due while the bond is in force which are attributable to injuries incurred in prior periods and which are otherwise unsecured by cash or acceptable securities. A bond shall be held until all payments secured thereby have been made or until it has been replaced by a bond issued by a qualified successor surety which covers all outstanding liabilities. Payments under the bond shall be due within 30 days after notice has been given to the surety by the chair of the commission that the principal has failed to make a payment required under the terms of an award, agreement or governing law. A surety bond shall not be used to fund a trust established to satisfy the requirements of this section.

As an alternative to the method described in the first paragraph of this subsection, an eligible employer may establish an actuarially 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, provided that the value of trust assets shall be at least equal to the present value of ~~such~~ ultimate expected incurred claims and claims settlement costs. The trust ~~asset~~ assets shall consist of cash or marketable securities of a type and risk character as specified in subsection 7, and shall have a situs in the United States. The trustee shall submit a report to the superintendent not less frequently than quarterly which lists the assets comprising the corpus of the trust, including a statement of their market value and the investment activity during the period covered by the report. The trust shall be established and maintained subject to the condition that trust assets cannot be transferred or revert in any manner to the employer except to the extent that the superintendent finds that the value of the trust assets exceeds the present value of incurred claims and claims settlement costs with an actuarially indicated margin for future loss development. 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 by a casualty actuary who is a member of the American Academy of Actuaries 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 in relation 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 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, subject to the provisions of subsection 6. 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.

As a further alternative to the ~~method~~ methods described in this subsection, an employer shall be eligible for approved self-insurance status pursuant to this Act if the employer submits a written guarantee of the obligations incurred pursuant to this Act, the guarantee to be issued by a United States or Canadian corporation which is a member of an affiliated group of which the employer is a member, and which corporation is solvent and demonstrates an ability to pay the compensation and benefits, and the guarantee is in a form acceptable to the superintendent. The guarantor shall provide quarterly financial statements, audited annual financial statements and such other information as the superintendent may require, and the employer shall provide a bond as otherwise required by this Act in an amount not less than $1,000,000. Any such guarantor shall be deemed to have submitted to the jurisdiction of the Workers' Compensation Commission and the courts of this State for purposes of enforcing any such guarantee. The guarantor, in all respects, shall be bound by and subject to the orders, findings, decisions or awards rendered against the employer for payment of compensation and any penalties or forfeitures provided under this Act. The superintendent, following hearing, may revoke the self-insured status of the employer if at any time the assets of the guarantor become impaired, encumbered or are otherwise found to be inadequate to support the guarantee.

Sec. 3. 39 MRSA §23, sub-§2-A, ¶E, as enacted by PL 1973, c. 559, §2, is amended to read:

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

Sec. 4. 39 MRSA §23, sub-§2-A, ¶E-1 is enacted to read:

E-1. An indemnity agreement in a form prescribed by the superintendent which jointly and severally binds the group and each member to comply with the provisions of the Act; and

Sec. 5. 39 MRSA §23, sub-§2-A, ¶F, as enacted by PL 1973, c. 559, §2, is amended to read:

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

Sec. 6. 39 MRSA §23, sub-§4, ¶B, as amended by PL 1987, c. 559, Pt. A, §6, is further amended to read:

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. No group may be approved to operate a self-insurance plan in the form of a corporation. Under ~~such~~ a group self-insurance 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~~ the 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 B to E~~ subsection 7 or the filing of a bond ~~of~~ issued by 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~~ subsection 7. 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~~ the superintendent 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~~ for failure to satisfy any applicable requirement of this section ~~at any time for good cause shown. For the purposes of this paragraph, "good cause" means the inability to pay, in a timely fashion, present and future compensation and other benefits for which employers are liable under this chapter.~~ The superintendent shall approve or disapprove an application within 90 days. The group qualifying under this paragraph shall be known as a self-insurer.

Sec. 7. 39 MRSA §23, sub-§4, ¶E, as amended by PL 1979, c. 577, §7, is further amended to read:

E. If for any reason, the status of a group self-insurer under this paragraph is terminated, the securities ~~or~~, the surety bond ~~on~~ or the deposit referred to herein shall ~~remain in the custody~~ continue to be held by the Treasurer of State and remain subject to the control of the Workers' Compensation Commission ~~for a period of at least 26 months~~ until all claims secured thereby have been discharged. At the expiration of such time or such further period as the superintendent may deem proper and warranted, ~~he~~ the superintendent 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.

Sec. 8. 39 MRSA §23, sub-§4-A is enacted to read:

4-A. Annual renewal; actuarial evaluation. Renewal and actuarial evaluation are governed by this subsection.

A. Any approval granted by the superintendent to an individual self-insurer or group self-insurer shall be for a term of not more than one year. Application for renewal of approval to self-insure shall be submitted to the superintendent not less than 21 days prior to the self-insurer's renewal date, except that evidence of excess coverage may be submitted up to 3 working days prior to renewal. A renewal application shall contain all reports, statements and other data required to be filed annually under rules adopted by the superintendent; copies of any proposed excess contracts, binders or cover notes; evidence of security posted; notice of any changes in servicing arrangements; and notice of any change in control of the self-insurer and its effect, if any, on guarantees provided pursuant to subsection 2. The superintendent may refuse to grant or renew self-insurance approval based upon any of the following grounds:

(1) Failure to submit any information required by law or rule or which is reasonably requested by the superintendent;

(2) Failure of a self-insurer to establish that it has met all applicable requirements of law or rule;

(3) Fraud or misrepresentation in the application; or

(4) Any ground upon which approval may be suspended or revoked as provided in subsection 9.

B. Each individual self-insured employer, except those utilizing an actuarially fully funded trust pursuant to subsection 2, shall be required to obtain an actuarial evaluation of undischarged claims and claims settlement liabilities not less frequently than once every 3 years. This review and evaluation shall be performed by a casualty actuary who is a member of the American Academy of Actuaries. Upon approval to self-insure, the superintendent shall indicate the deadline for that self-insurer to complete an actuarial review. In addition to this triennial review, the superintendent may require the reserves and liabilities of a self-insurer to be reviewed and evaluated as often as the superintendent deems necessary.

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

C. Each individual self-insurer except a public employer shall demonstrate in its initial or renewal application that it has working capital adequate to its operating needs.

D. When a self-insurer's excess contract expires on a date other than the renewal date for its self-insurance approval, the self-insurer shall file evidence of any required excess coverage no later than 3 working days before the date of expiration of its coverage.

Sec. 9. 39 MRSA §23, sub-§6, ¶C is enacted to read:

C. The superintendent may adopt rules establishing specific requirements applicable to security deposits and excess insurance, including, but not limited to, provisions governing standards for waiver of excess insurance, use of trusts in lieu of security deposits and release or application of deposit funds.

Sec. 10. 39 MRSA §23, sub-§7, as enacted by PL 1981, c. 484, §7, is amended to read:

7. Acceptable deposit funds or surety bonds. In addition to cash, the deposit funds acceptable to the superintendent as a security deposit shall include United States Government bonds, notes or bills, issued or guaranteed by the United States of America; bonds secured by the full faith, credit and taxing power of political subdivisions of the United States rated in the 3 highest grades by a national rating agency such as Moody's, Standard and Poor's~~;~~ or Fitch, as of the foregoing year end; money market funds which are invested only in United States Government or government agency obligations with a maturity ~~of~~ not exceeding one year ~~or less~~; high grade commercial paper rated as either ~~A1~~ A-1 or ~~P1~~ P-1 by a ~~national rating agency~~ nationally recognized bond rating service such as Moody's, Standard and Poor's or Fitch, or money market funds invested in such paper; certificates of deposit issued by a duly chartered commercial bank or thrift institution in the State which ~~are~~ is protected by the Federal Deposit Insurance corporation, and if such a bank or institution possesses assets of at least $100,000,000 and maintains a ratio of capital to assets equal to or greater than 6 1/2%; savings certificates issued by any savings and loan association in the State which are protected by the Federal Savings and Loan Insurance Corporation, and if such an association possesses assets of at least $100,000,000 and maintains a ratio of capital to assets equal to or greater than 6 1/2%; surety bonds in a form prescribed by the superintendent which are issued by any corporate surety which meets the qualifications prescribed by ~~regulation~~ rule of the superintendent, and such other investments approved by the superintendent.

Sec. 11. 39 MRSA §23, sub-§7-A, as enacted by PL 1985, c. 371, §1, is amended to read:

7-A. Form of excess contracts. All primary excess insurance contracts issued or renewed after the effective date of this subsection shall be issued by companies that meet the requirements of subsection 8 and 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. 12. 39 MRSA §23, sub-§§8 and 9, as enacted by PL 1981, c. 484, §7, are amended to read:

8. Qualifications for excess carriers. No workers' compensation contract or policy issued after the effective date of this section may be recognized by the superintendent in considering the ability of an individual or group self-insurer to fulfill its financial obligations under this Act, unless the contract or policy is issued by an admitted insurance company or by ~~an approved alien unincorporated insurer or other subsequently approved insurance exchange possessed of similar capitalization, deposit funds and underwriting capabilities which meets the minimum qualifications prescribed in Title 24-A and regulations appertaining to admission or eligibility requirements~~ Lloyd's of London, a syndicate of unincorporated alien insurers which has established and maintains United States trust funds consistent with the requirements of Title 24-A, section 731, paragraph C.

9. Revocation or termination of the self-insurance privilege. The following may constitute grounds for denial of the right of any individual or group to continue the option of self-insurance:

A. Failure to comply with regulations adopted by the superintendent or any provisions of this Act within 14 days or such other time as may be established by order of the superintendent of notice of such failure;

B. Failure to comply with any lawful order of the superintendent;

C. Repeated failure to comply with regulations of the superintendent or any provisions of this Act;

D. Committing an unfair or deceptive act or practice as defined in Title 24-A, sections 2151 to 2167;

E. Deterioration of financial condition adversely affecting the self-insurer's ability to pay expected losses; or

F. Failure to pay any lawful assessment of the Maine Self-Insurance Guarantee Association.

Notwithstanding Title 5, section 10051, the superintendent is expressly granted the authority to revoke or suspend the right of an individual or group to continue the option to self-insure after a hearing held on not less than 7 days' notice in accordance with Title 5, chapter 375, subchapter IV and Title 24-A, chapter 3.

Sec. 13. 39 MRSA §23, sub-§9-A is enacted to read:

9-A. Termination of self-insurance. If a self-insured employer elects to terminate its self-insurance program, or a portion of a self-insurance program, it shall, not later than 45 days prior to terminating its program, submit a termination plan to the superintendent. The requirements of this subsection apply to that part of the self-insurance program that is being terminated. The plan shall include, but not be limited to, procedures for claims handling, reservation of assets to be maintained in the State to discharge claims liabilities and other obligations under this Act, and a description of how ultimate reserves were determined that require reservation of funds. The termination plan shall contain a written agreement that the self-insurer shall continue to be subject to informational filings respecting financial condition and actuarial evaluations of claims and claims expense reserves and loss transfers when determined necessary by the superintendent to ensure that claims are adequately secured. The plan shall also comply with any terms and conditions which may be prescribed by rule adopted by the superintendent. In order to protect the interests of claimants, the superintendent may require a further deposit to be held in trust by the Treasurer of State, or may require full funding of workers' compensation liabilities.

If a self-insurer's approval is revoked, suspended or otherwise terminated in a manner other than by its election, the superintendent shall issue an order that prescribes terms and conditions related to the termination which shall, to the extent practicable, conform to the requirements governing termination plans as prescribed by this subsection and rules promulgated under this subsection. In the event that a self-insurer attempts 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. Any order issued pursuant to this subsection, including an order directing a self-insurer to produce relevant information, may be enforced as provided by Title 24-A, section 214.

This subsection applies to any termination of a self-insurer's approval, whether in whole or in part, including those resulting from a business sale, split-up, spin-off, leveraged buyout, reorganization, termination of a guarantee provided under subsection 2, or cessation of business in the State.

Sec. 14. 39 MRSA §23-A, sub-§2, as amended by PL 1987, c. 95, §3, is further amended to read:

2. Created; legal entity. There is created a 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~~ self-insure in this State, except that all ~~of~~ public employers which are individual self-insurers, with 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. Public employers that are group self-insur-

ers, with a state-assessed valuation equal to or in excess of $5,000,000,000 are not 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

(2) The self-insurer has been a member of the association at some point in time during the ~~12-month~~ 36-month period immediately ~~preceeding~~ 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.

Sec. 15. 39 MRSA §23-A, sub-§4, ¶A, as amended by PL 1987, c. 272, §2, 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. 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~~ 30 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~~ 30 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~~ Prior to December 1, 1992, 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). After November 30, 1992, this fund shall not exceed $2,000,000, except that once the fund reaches $2,000,000, the fund shall not exceed $2,000,000 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 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. 16. Allocation. The following funds are allocated from Other Special Revenue funds to carry out the purposes of this Act.

1989-90

PROFESSIONAL AND FINANCIAL REGULATION, DEPARTMENT OF

Bureau of Insurance

All Other	$31,000

Provides funds for consulting fees and for hearing costs.

Sec. 17. Effective date. Section 14 of the Act is effective with respect to self-insurers who became members of the Maine Self-Insurance Guarantee Association after October 1, 1981. Any self-insurer member who was not subject to a full assessment for the first 30 months of its membership shall be assessed an amount equal to the difference between the assessments actually paid during its first 30 months and the amount that would have been paid if the self-insurer had been subject to a full assessment for those 30 months. The assessment shall be paid in the time and in the manner determined by the Association. For purposes of the limitation on the size of the fund, set forth in the Maine Revised Statutes, Title 39, section 23-A, subsection 4, paragraph A, subparagraph (3), this assessment shall be considered an initial assessment of a new member self-insurer.

See title page for effective date.

CHAPTER 436

H.P. 844 - L.D. 1176

An Act to Adapt the Maine Milk Pool Law to Potential Changes in Milk Pricing

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

Sec. 1. 7 MRSA §2954, sub-§12 is enacted to read:

12. Adjustments for changes in costs of production. Notwithstanding any other provisions of this section, the commission may only adjust minimum prices to reflect changes in costs of production after posting notice of rule-making in accordance with Title 5, section 8053. The commission may not adjust any minimum price to reflect changes in costs of production under the emergency rule-making provisions of Title 5, section 8054.

Sec. 2. 7 MRSA §3152, sub-§1-A, as enacted by PL 1987, c. 447, §5, is amended to read:

1-A. Base minimum price. "Base minimum price" means ~~such~~ that part of the minimum Class I and Class II prices established by the Maine Milk Commission pursuant to chapter 603 ~~as~~ which corresponds to Class I and Class II prices established pursuant to the New England Milk Marketing Order, excluding any amounts established by the Maine Milk Commission to reflect the increased costs of production pursuant to section 2954, subsection 2, paragraph A.

Sec. 3. 7 MRSA §3152, sub-§1-B is enacted to read:

1-B. Adjusted base minimum price. "Adjusted base minimum price" means that part of the minimum Class I and Class II prices established by the Maine Milk Commission pursuant to chapter 603 which corresponds to Class I and Class II prices established pursuant to the New England Milk Marketing Order, plus any amounts established by the Maine Milk Commission to reflect the increased costs of production pursuant to section 2954, subsection 2, paragraph A.

Sec. 4. 7 MRSA §3152, sub-§8-A, as enacted by PL 1987, c. 447, §5, is amended to read:

8-A. Over-order premium. "Over-order premium" means ~~such~~ that part of the minimum Class I and Class II prices established by the Maine Milk Commission pursuant to chapter 603, ~~as~~ which exceeds the applicable Class I and Class II prices established pursuant to the New England Milk Marketing Order as adjusted to reflect the increased costs of production pursuant to section 2954, subsection 2, paragraph A.

Sec. 5. 7 MRSA §3153, sub-§2, ¶¶A and B, as amended by PL 1987, c. 447, §6, are further amended to read: