

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND SEVENTEENTH LEGISLATURE

FIRST REGULAR SESSION
December 7, 1994 to June 30, 1995

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 29, 1995

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
1995

Licensing and Enforcement.

DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION
TOTAL

\$-0- \$-0-

Sec. 129. Transition provisions. All employees of the following boards are employees of the Department of Professional and Financial Regulation and allocated to the Division of Licensing and Enforcement: the Electricians' Examining Board; the State Board of Social Worker Licensure; the Manufactured Housing Board; the Board of Chiropractic Licensure; the Board of Barbering and Cosmetology; the State Board of Funeral Service; the Board of Counseling Professionals Licensure; the State Board for Licensure of Architects, Landscape Architects and Interior Designers; the Board of Accountancy; the Oil and Solid Fuel Board; and the Plumbers' Examining Board. The accrued fringe benefits of those employees, including vacation and sick leave, health and life insurance, seniority and retirement, remain with those employees.

See title page for effective date.

CHAPTER 398

H.P. 1101 - L.D. 1548

An Act to Clarify and Amend Provisions of the Maine Insurance Code and Workers' Compensation Self-insurance

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

Whereas, self-insurers may assume considerable expenses that may otherwise be avoided under the provisions contemplated by this legislation; and

Whereas, current requirements are cost-prohibitive for many self-insurers; and

Whereas, the law currently requires the Maine Self-Insurance Guarantee Association to assess all new members of the association for their respective contributions to the Maine Self-Insurance Guarantee Fund; and

Whereas, the association relies upon information concerning new members received from the Superintendent of Insurance in making these assessments; and

Whereas, the association makes its annual assessments in July of each year; and

Whereas, it is necessary for the Superintendent of Insurance to notify the association of new members in advance of the annual assessment date; 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:

Sec. 1. 24-A MRSA §2385-F is enacted to read:

§2385-F. Coverage denial

Workers' compensation coverage may not be issued to an employer until the employer pays any undisputed premiums or assessments to a previous workers' compensation insurer, including a domestic mutual insurer established pursuant to section 3703, a group self-insurer approved pursuant to Title 39-A, section 403, subsection 4, or the workers' compensation residual market mechanism.

Sec. 2. 39-A MRSA §403, sub-§3, as amended by PL 1993, c. 510, §1, is repealed and the following enacted in its place:

3. Proof of solvency and financial ability to pay; trust. The employer may comply with this section by furnishing satisfactory proof to the Superintendent of Insurance of solvency and financial ability to pay the compensation and benefits, and depositing cash, satisfactory securities, irrevocable standby letters of credit issued by a qualified financial institution or a surety bond with the board, in such sum as the superintendent may determine pursuant to subsection 8, the bond to run to the Treasurer of State 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, the cash or securities must be placed in an account at interest by the Treasurer of State, and the accumulation of interest on the cash or securities so deposited must be credited to the account and may not be paid to the employer to the extent that the interest is required to support any present value discounting in the determination of the amount of the deposit. Any security deposit must 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 this Act. If the superintendent determines that the self-insurer has experienced a deterioration in financial condition that adversely

affects the self-insurer's ability to pay obligations under this Act, the security amount may be in excess of the minimum amount required by this Title.

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

A. An individual self-insurer providing an irrevocable standby letter of credit as security shall file with the Superintendent of Insurance a letter of credit, on a form approved by the superintendent, copies of any agreements or other documents establishing the terms and conditions of the employer's reimbursement obligations to the financial institution issuing the letter of credit, together with copies of any required security agreements, mortgages or other agreements or documents granting security for the employer's reimbursement obligations and any other agreements that contain conditions, restrictions or limitations of any kind upon the employer, the superintendent or the Treasurer of State. The form of letter of credit approved by the superintendent must include, but is not limited to, all terms specifically required by this subsection and all terms reasonably required to secure the payment of compensation and benefits to claimants as required under this Act. The superintendent, upon receipt of the original irrevocable standby letter of credit, shall promptly forward it to the Treasurer of State.

The Superintendent of Insurance shall adopt rules to establish the qualifications for financial institutions issuing irrevocable standby letters of credit that must include maintenance of a long-term unsecured debt rating of at least A by either Moody's Investors Service, Inc. or Standard and

Poor's Corporation, or with commercial paper within the 3 highest short-term rating categories established by Moody's Investors Service, Inc. or Standard and Poor's Corporation. The irrevocable standby letter of credit must be the individual obligation of the issuing financial institution, may not be subject to any agreement, condition, qualification or defense between the financial institution and the employer and may not in any way be contingent on reimbursement by the employer. If the rating of an issuing financial institution that has issued an irrevocable standby letter of credit pursuant to this section falls below the required standard, the employer must obtain a new irrevocable standby letter of credit from a qualified financial institution or must provide other eligible security of equal value approved by the superintendent. The irrevocable standby letter of credit is automatically extended for one year from the date of expiration unless, 90 days prior to any expiration date, the issuing financial institution notifies the superintendent that the financial institution elects not to renew the irrevocable standby letter of credit.

An irrevocable standby letter of credit that has been issued by a qualified financial institution and accepted by the Superintendent of Insurance binds the issuing financial institution to pay one or more drafts drawn by the Treasurer of State, as directed by the superintendent, as long as the draft does not exceed the total amount of the irrevocable standby letter of credit. Any draft presented by the Treasurer of State, as directed by the superintendent, must be promptly honored if accompanied by the certification of the superintendent that any obligation under this chapter has not been paid when due or that a proceeding in bankruptcy has been initiated by or with respect to the employer in a court of competent jurisdiction.

If the Superintendent of Insurance certifies that the superintendent has been notified by the issuing financial institution that the irrevocable standby letter of credit will expire by its terms in 30 days or less and that the irrevocable standby letter of credit was not replaced within 15 days after that notice to the superintendent by other eligible security of equal value approved by the superintendent, then the financial institution must remit within 15 days the full amount of the irrevocable letter of credit to the Treasurer of State without further certification.

Any proceeds from a draw on such an irrevocable standby letter of credit by the Treasurer of State, as directed by the Superintendent of Insurance, must be held by the Treasurer of State on behalf of workers' compensation claimants to

secure payment of claims until either the superintendent authorizes the Treasurer of State to release those proceeds to the employer upon provision by the employer of replacement security adequate to meet the requirements for security set by the superintendent or the superintendent directs distribution of the proceeds in accordance with this Title.

To the extent not inconsistent with state law, the letter of credit is subject to and governed by the Uniform Customs and Practice for Documentary Credits, 1983, International Chamber of Commerce Publication No. 400. If any legal proceedings are initiated with respect to payment of the letter of credit, those proceedings are subject to the State's courts and law.

B. The Superintendent of Insurance shall prescribe the form of the surety bond that may be used to satisfy, in whole or in part, the self-insurer's responsibility under this section to post security. The bond must be continuous, be subject to nonrenewal only upon not less than 60 days notice to the superintendent, cover payment of all present and future liabilities incurred under this Act while the bond is in force and cover payments that become due while the bond is in force that are attributable to injuries incurred in prior periods and otherwise unsecured by cash, irrevocable standby letters of credit or acceptable securities. A bond must be held until all payments secured by the bond have been made or until the bond has been replaced by other eligible security approved by the superintendent that covers all outstanding liabilities. Payments under the bond are due within 30 days after notice has been given to the surety by the board that the principal has failed to make a payment required under the terms of an award, agreement or governing law. A trust established to satisfy the requirements of this section may not be funded by a surety bond.

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. 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 report includes an evaluation of the completed year experience with claims evaluated not less than 6 months from the end of the plan year; and

(c) 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. Funds may not be released from the trust or transferred between years except as approved 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 proportionate share of the liabilities and obligations of the trust to the 95% confidence level. If for any reason the departing member fails to fund the member's proportionate share of the trust's exposure to the 95% level of confidence, the remaining members of the group shall make the additional contribution no later than the anniversary date of the program as required to fund the departing member's exposure in accordance with this provision.

(3) Depending upon the financial condition of the self-insurer, and if approved by the superintendent, a self-insurer that has maintained an actuarially determined fully funded trust for a period of 5 or more consecutive years may fund all years, including the prospective fund year, in the aggregate at the 75% or higher confidence level.

(4) Trust assets must consist of cash or marketable securities of a type and risk character as specified in subsection 9. The trustee shall submit a report to the superintendent not less frequently than quarterly that 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 must be established and maintained subject to the condition that trust assets may not 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 payout, must be as approved by the superintendent, except that the value of the trust account must 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.

D. Notwithstanding any provision of this chapter, any bond or security deposit required of a public employer that is a self-insurer may not exceed \$50,000, as long as the 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 \$35,000,000. 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 must 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.

E. In consideration of a self-insuring entity's application for authorization to operate a plan of self-insurance, the Superintendent of Insurance may require or permit an applicant to employ valid risk transfer by the utilization of primary reinsurance, subject to the provisions of subsection 8. Standards respecting the application of reinsurance must be contained in a rule adopted by the superintendent pursuant to the Maine Administrative Procedure Act. Reinsurance must be defined as insurance covering workers'

compensation exposures in excess of risk retained by a self-insurer.

F. An employer may 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 that 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 of Insurance. The guarantor shall provide audited annual financial statements and such other information as the superintendent may require, including quarterly financial statements, and the employer shall provide a cash deposit, satisfactory securities, irrevocable standby letters of credit issued by a qualified financial institution or a surety bond as otherwise required by this Act in an amount not less than \$100,000. The guarantor is deemed to have submitted to the jurisdiction of the board and the courts of this State for purposes of enforcing the guarantee. The guarantor, in all respects, is 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 or encumbered or are otherwise found to be inadequate to support the guarantee.

G. A subsidiary employer may be eligible for approved self-insurance status pursuant to this Act if: the subsidiary employer files an application jointly with a qualified parent corporation that has direct ownership of a majority voting interest of the subsidiary employer; the parent corporation and subsidiary employer submit an irrevocable contract of assignment, on a form approved by the Superintendent of Insurance, of the subsidiary employer's obligations incurred pursuant to this Act; the parent corporation is solvent and demonstrates an ability to pay the compensation and benefits of the subsidiary employer; and the subsidiary employer meets all other requirements for application and qualification as a self-insurer under this chapter and under any applicable rules adopted by the superintendent. If the parent corporation is not a United States corporation, the superintendent may, in the superintendent's sole discretion, establish the conditions of any approval of the foreign parent corporation or deny the application of the foreign parent corporation. As part of its application for approval, a foreign parent corporation must pro-

vide the following information to the superintendent: evidence that its country of domicile has substantially similar laws with respect to submission to the jurisdiction of the board and the courts of this State for the purposes of payment of workers' compensation claims of the subsidiary employer; audited financial statements, as otherwise required by this Act, prepared in the English language by a certified public accountant licensed in a state in the United States in accordance with generally accepted auditing standards as prescribed by the American Institute of Certified Public Accountants; and security, as otherwise required by the Act, in United States currency. The irrevocable contract of assignment and application must be signed by a duly authorized officer of each corporation and the application must include a board of directors' resolution from each entity as evidence of each officer's authority to enter into the contract. The superintendent may determine the subsidiary employer's eligibility for self-insurance authority and the amount of required security based upon the parent corporation's consolidated financial statement, as long as the employer complies with paragraph H. A subsidiary employer currently authorized to self-insure need not pay the application fee required of a new applicant in order to file an application to qualify under this subsection, but the subsidiary employer and parent corporation must provide all information required under this subsection as if they were a new applicant. Once the subsidiary employer becomes authorized to self-insure under this section, the parent corporation assumes liability for all prior workers' compensation liabilities incurred by the subsidiary employer during the period of self-insurance prior to the date of authorization under this subsection, unless the subsidiary employer files an alternative plan approved by the superintendent. The parent corporation and the subsidiary employer must both be named on the certificate of authorization for self-insurance authority. Upon issuance of a certificate of authorization pursuant to this subsection, the following applies.

(1) The parent corporation is deemed to have submitted to the jurisdiction of the board and the courts of the State for the purposes of payment of workers' compensation claims of the subsidiary employer and is deemed to have submitted to the jurisdiction of the superintendent for purposes of implementation of this Act. The parent corporation, in all respects, is bound by and subject to all orders, findings, decisions or awards rendered against the subsidiary employer for payment of

compensation and any penalties or forfeitures provided under this Act.

(2) A subsidiary employer authorized under this subsection and the parent corporation are considered one employer for the purposes of membership in the Maine Self-Insurance Guarantee Association. In the event of termination, transfer, insolvency, dissolution or bankruptcy of a subsidiary employer qualifying under this subsection, the parent corporation assumes all assessment obligations of the subsidiary employer for its period of self-insurance and is not considered a new member of the association.

(3) If the subsidiary employer fails for any reason to pay compensation and benefits as required under this Act, the parent corporation stands in the place of the subsidiary employer and is deemed to be the employer, subject to all requirements and provisions of this Act. For the purposes of payment of benefits and compensation under this Act, an employee of the subsidiary employer is deemed to be concurrently employed by both corporations. Concerning notification of injury to an employee of the subsidiary employer, notice to or knowledge of the occurrence of the injury on the part of the subsidiary employer is deemed notice or knowledge on the part of the parent corporation. The transfer, insolvency, dissolution or bankruptcy of a subsidiary employer qualifying under this subsection does not relieve the parent corporation from payment of compensation for injuries or death sustained by an employee during the time the subsidiary employer was approved for self-insurance authority under this subsection and the parent corporation continues to be deemed an employer until such time as all outstanding workers' compensation claims have been discharged.

(4) The transfer, insolvency, dissolution or bankruptcy of a parent corporation causes the termination of the subsidiary employer's authorization to self-insure and a termination plan must be filed pursuant to subsection 14.

H. Each individual self-insurer shall submit with its application, and not less frequently than annually thereafter, a financial statement of current origin that has been audited by a certified public accountant. When a self-insurer qualifies on the basis of a financial guarantee or on the basis of an irrevocable contract of assignment, the Super-

intendent of Insurance may accept an audited financial statement of the guarantor or parent corporation in satisfaction of this requirement and may also require combining statements provided in an array that is reconciled to the consolidated report.

Sec. 3. 39-A MRSA §403, sub-§6, ¶A, as enacted by PL 1991, c. 885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

A. Any approval granted by the Superintendent of Insurance to an individual self-insurer or group self-insurer must be for a term of not more than one year. ~~Application~~ A complete application for renewal of approval to self-insure must be submitted to the superintendent not less than 21 days prior to the self-insurer's renewal date, except that evidence of reinsurance coverage may be submitted up to 3 working days prior to renewal. Notwithstanding this paragraph, when a self-insurer has made a timely and complete application for renewal, the existing authorization does not expire until the renewal has been determined by the superintendent. A renewal application must contain: all reports, statements and other data required to be filed annually under rules adopted by the superintendent; copies of any proposed reinsurance 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 3. The superintendent may refuse to grant or renew self-insurance approval based upon any of the following grounds:

- (1) Failure to submit any information that is required by law or rule or 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 13.

The effective date of any notice of nonrenewal under this subsection is on or after the date of the notice. A notice of nonrenewal under this subsection may not include nonrenewal for any approved period of self-insurance prior to the notice.

Sec. 4. 39-A MRSA §403, sub-§9, as enacted by PL 1991, c. 885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

9. Acceptable deposit funds or investments for trust funds. In addition to cash, the deposit ~~or funds or permissible investments for trust funds~~ acceptable to the Superintendent of Insurance as a security deposit ~~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 Investors Service, Inc., Standard and Poor's Corporation or Fitch Investors Service, Inc. as of the foregoing year end; money market funds invested only in United States Government or government agency obligations with a maturity not exceeding one year; high grade are bonds, notes and bills that are issued by and are the direct obligation of the United States Treasury; the direct obligations of the following United States Government agencies: the Government National Mortgage Association; the Federal Home Loan Bank; the Federal Farm Credit Bank; the Student Loan Marketing Association; and the Federal National Mortgage Association; the direct obligations of any state of the United States or any subdivision of any state to which are pledged the full faith and credit of the state or subdivision, the unsecured debt of which is rated "A" or better by Standard and Poor's Corporation or the rating equivalent of Moody's Investors Service, Inc., Fitch Investors Service, Inc. or any other nationally recognized statistical rating agency; commercial paper rated as either "A-1" or "P-1" by a nationally recognized bond rating service such as Moody's Investors Service, Inc., Standard and Poor's Corporation or the rating equivalent of Fitch Investors Service, Inc., or money market funds invested in such paper or any other nationally recognized statistical rating agency; money market funds rated "Aam" or "AAm-G" or better by Standard and Poor's Corporation or the rating equivalent of any other nationally recognized statistical rating agency; certificates of deposit issued by a duly chartered commercial bank or thrift institution in the State protected by the Federal Deposit Insurance Corporation 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 protected by the Federal Savings and Loan Deposit Insurance Corporation 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 issued by any corporate surety that meets the qualifications prescribed by rule of the superintendent; irrevocable standby letters of credit issued to the Treasurer of State by financial institutions with long term unse-~~

~~cured debt ratings of at least A by either Moody's Investors Service, Inc. or Standard and Poor's Corporation or with commercial paper within the 3 highest short term rating categories established by Moody's Investors Service, Inc. or Standard and Poor's Corporation; and such other investments approved by the superintendent corporate bonds rated "Aaa," "Aa1" or "Aa2" by Moody's Investors Service, Inc., or rated "AAA," "AA+" or "AA" by Standard and Poor's Corporation, or the rating equivalent of Fitch Investors Service, Inc. or any other nationally recognized statistical agency, in an amount not to exceed 20% of the total investment portfolio; and such other investments approved by the superintendent.~~

Investments must be diversified in a prudent manner to ensure that funds are maintained at a sufficient level to discharge workers' compensation obligations incurred by the employer pursuant to this Title as those obligations become due and payable.

Sec. 5. 39-A MRSA §404, sub-§4, ¶A, as enacted by PL 1991, c. 885, Pt. A, §8 and affected by §§9 to 11, is amended by amending subparagraphs (2) and (3) to read:

(2) Shall assess each member of the association as follows:

(a) Each individual self-insurer must be annually assessed an amount equal to 1% of the annual standard premium that would have been paid by that individual self-insurer during the prior calendar year; payment to the association must be made by September 15th following the close of that calendar year. When any such assessment is paid based in whole or in part upon estimates of annual standard premium for the prior calendar year, the next year's assessment must include an adjustment of the assessment of ~~such that~~ prior year based on actual audited annual standard premium. ~~Regardless of the size of the fund referred to in subparagraph (3), during its first 30 months of membership, no individual self-insurer may discount or reduce this 1% assessment;~~

(b) Each group self-insurer must be annually assessed an amount equal to .1% of the total annual standard premium that would have been paid by all the members of that group self-insurer during the prior calendar year; payment to the association must be made by September 15th following the close of that calendar year. When

any such assessment is paid based in whole or in part upon estimates of annual standard premium for the prior calendar year, the next year's assessment must include an adjustment of the assessment of ~~such that~~ prior year based on actual audited annual standard premium. ~~Regardless of the size of the fund referred to in subparagraph (3), during its first 30 months of membership, no group self-insurer may discount or reduce this .1% assessment;~~

(c) Each member self-insurer must be notified of the assessment at least 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 must 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 must be made; and

(f) Upon notification by the superintendent, pursuant to subsection 7, paragraph C, of the existence and identity of a new member self-insurer and regardless of the size of the fund referred to in subparagraph (3), the association shall assess each new member self-insurer annually, whether individual or group, in accordance with divisions (a) and (b) for the first 30 months of its membership in the association. An individual or group self-insurer may not discount or reduce its assessment during the first 30 months of membership as determined in accordance with the superintendent's notification of new member status;

(3) Shall administer a fund, to be known as the Maine Self-Insurance Guarantee Fund, which must receive the assessments required in subparagraph (2). Prior to December 1, 1992, this fund may not exceed \$1,000,000, except that once the fund reaches \$1,000,000, the fund may not exceed \$1,000,000 plus all subsequent initial assessments of new member self-insurers

that are required to be made in subparagraph (2), ~~divisions (a) and (b)~~ division (f). After November 30, 1992, this fund may not exceed \$2,000,000, except that once the fund reaches \$2,000,000, the fund may not exceed \$2,000,000 plus all subsequent initial assessments of new member self-insurers that are required to be made in subparagraph (2), ~~divisions (a) and (b)~~ division (f). The costs of administration by the association must 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 must 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 that have not been raised by imposition of any preassessment or postassessment. 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;

Sec. 6. 39-A MRSA §404, sub-§7, ¶C is enacted to read:

C. The Superintendent of Insurance shall notify the association of the existence and identity of each self-insurer that is a new member of the association within 30 days of the superintendent's determination of the self-insurer's membership.

Sec. 7. Report required. The Commissioner of Professional and Financial Regulation shall convene a study group of representatives from the Maine Self-Insurance Guarantee Association, the Bureau of Insurance and the Public Advocate. The group shall study the Maine Self-Insurance Guarantee

Fund, focusing on the financial position of the fund, the current level of assessments and whether or not the fund can meet the expenses for the payment of covered claims in the event of a self-insurer's insolvency. At least 2 weeks prior notice of group meetings must be given to the public. The group shall submit a report to the Joint Standing Committee on Banking and Insurance on or before January 1, 1996.

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

Effective June 30, 1995.

CHAPTER 399

H.P. 1119 - L.D. 1563

An Act to Address a Shortfall in the Ground Water Oil Clean-up Fund and Change the Financial Assistance Program for Owners of Underground Oil Storage Facilities

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

Whereas, the Ground Water Oil Clean-up Fund is established to pay clean-up costs and damages associated with leaks and spills from oil storage facilities; and

Whereas, the Commissioner of Environmental Protection has determined that the potential liabilities of the fund will exceed projected fund income unless changes are made in fee collection and disbursement; 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:

Sec. 1. 10 MRSA §1023-D, sub-§2, as amended by PL 1989, c. 543, §3, is further amended to read:

2. Sources of money. There shall must be paid into the fund the following:

A. All money appropriated for inclusion in the fund or appropriated to the authority for use in providing financial assistance to owners of un-