



# 128th MAINE LEGISLATURE

## SECOND REGULAR SESSION-2018

---

Legislative Document

No. 1888

---

S.P. 721

In Senate, March 28, 2018

### **An Act To Amend the Workers' Compensation Laws Governing Affiliated Self-insurance Groups**

(AFTER DEADLINE)

---

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 205.

Reference to the Committee on Labor, Commerce, Research and Economic Development suggested and ordered printed.

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST  
Secretary of the Senate

Presented by Senator VOLK of Cumberland.

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

2 **Sec. 1. 39-A MRSA §403, sub-§3**, as amended by PL 2011, c. 98, §1 and c. 180,  
3 §1, is further amended to read:

4 **3. Proof of solvency and financial ability to pay; trust.** The employer may  
5 comply with this section by furnishing satisfactory proof to the Superintendent of  
6 Insurance of solvency and financial ability to pay the compensation and benefits, and  
7 depositing cash, satisfactory securities, irrevocable standby letters of credit issued by a  
8 qualified financial institution or a surety bond with the superintendent, in such sum as the  
9 superintendent may determine pursuant to subsection 8, the Treasurer of State to be listed  
10 as beneficiary of the bond or the irrevocable standby letter of credit and the bond or the  
11 irrevocable standby letter of credit to be conditional upon the faithful performance of this  
12 Act relating to the payment of compensation and benefits to any injured employee. In  
13 case of cash or securities being deposited, or drawn on a surety bond or letter of credit,  
14 the cash or securities must be placed in an account at interest by the Treasurer of State,  
15 and the accumulation of interest on the cash or securities so deposited must be credited to  
16 the account and may not be paid to the employer to the extent that the interest is required  
17 to secure the employer's self-insurance obligations, including the amount needed to  
18 support any present value discounting in the determination of the amount of the deposit.  
19 Any security deposit must be held by the Treasurer of State in trust for the benefit of the  
20 self-insurer's employees for the purposes of making payments under this Act. If the  
21 superintendent determines that the self-insurer has experienced a deterioration in financial  
22 condition that adversely affects the self-insurer's ability to pay obligations under this Act,  
23 the security amount may be in excess of the minimum amount required by this Title.

24 A Except as provided in subsection 5, paragraph A-1, a self-insurer may, with the  
25 approval of the Superintendent of Insurance, use the following types of security to satisfy  
26 the self-insurer's responsibility to post security required by the superintendent: a surety  
27 bond; an irrevocable standby letter of credit; cash deposits and acceptable securities; and  
28 an actuarially determined fully funded trust. For purposes of this section, "tangible net  
29 worth" means equity less assets that have no physical existence and depend on expected  
30 future benefits for their ascribed value. Unless disapproved by the superintendent  
31 pursuant to paragraph C, subparagraphs (5) and (6), a group self-insurer that maintains a  
32 trust actuarially funded to the confidence level required by the superintendent may use an  
33 irrevocable standby letter of credit as follows: only in an amount not greater than the  
34 difference between the funding to the required confidence level and funding to the  
35 confidence level reduced by 10 percentage points; only as long as the trust assets are not  
36 used as collateral for the letter of credit; and only as long as the value of trust assets,  
37 excluding the value of the letter of credit, is at least equal to the present value, evaluated  
38 to the 65% confidence level, of ultimate incurred claims, claims settlement costs and, if  
39 determined necessary by the superintendent, administrative costs.

40 A. ~~An individual~~ A self-insurer providing an irrevocable standby letter of credit as  
41 security shall file with the Superintendent of Insurance a letter of credit, on a form  
42 approved by the superintendent, copies of any agreements or other documents  
43 establishing the terms and conditions of the employer's or group's reimbursement  
44 obligations to the financial institution issuing the letter of credit, together with copies

1 of any required security agreements, mortgages or other agreements or documents  
2 granting security for the employer's or group's reimbursement obligations and any  
3 other agreements that contain conditions, restrictions or limitations of any kind upon  
4 the employer or group, the superintendent or the Treasurer of State. The form of  
5 letter of credit approved by the superintendent must include, but is not limited to, all  
6 terms specifically required by this subsection and all terms reasonably required to  
7 secure the payment of compensation and benefits to claimants as required under this  
8 Act.

9 In order to issue an irrevocable standby letter of credit as security under this  
10 paragraph, a financial institution or its parent company must either:

11 (1) Maintain a long-term unsecured debt rating of at least A by either Moody's  
12 Investors Service, Inc. or Standard and Poor's Corporation;

13 (2) Maintain a short-term commercial paper rating within the 3 highest  
14 categories established by Moody's Investors Service, Inc. or Standard and Poor's  
15 Corporation; or

16 (3) Be certified in writing by the Superintendent of Financial Institutions to be  
17 well capitalized and well managed in accordance with the criteria set forth in  
18 Title 9-B, section 446-A, subsections 1 and 2. The Superintendent of Insurance  
19 shall keep the certification confidential, except from the subject financial  
20 institution, in accordance with Title 9-B, section 226.

21 The Superintendent of Insurance may adopt rules to establish additional  
22 qualifications for financial institutions issuing irrevocable standby letters of credit.  
23 Rules adopted pursuant to this paragraph are routine technical rules pursuant to Title  
24 5, chapter 375, subchapter 2-A.

25 The irrevocable standby letter of credit must be the individual obligation of the  
26 issuing financial institution, may not be subject to any agreement, condition,  
27 qualification or defense between the financial institution and the employer or group  
28 and may not in any way be contingent on reimbursement by the employer or group.  
29 If the rating of an issuing financial institution that has issued an irrevocable standby  
30 letter of credit pursuant to this section falls below the required standard, the employer  
31 or group shall obtain a new irrevocable standby letter of credit from a qualified  
32 financial institution or shall provide other eligible security of equal value approved  
33 by the Superintendent of Insurance. The irrevocable standby letter of credit is  
34 automatically extended for one year from the date of expiration unless, 90 days prior  
35 to any expiration date, the issuing financial institution notifies the Superintendent of  
36 Insurance that the financial institution elects not to renew the irrevocable standby  
37 letter of credit.

38 An irrevocable standby letter of credit that has been issued by a qualified financial  
39 institution and accepted by the Superintendent of Insurance binds the issuing  
40 financial institution to pay one or more drafts drawn by the Treasurer of State, as  
41 directed by the superintendent, as long as the draft does not exceed the total amount  
42 of the irrevocable standby letter of credit. Any draft presented by the Treasurer of  
43 State, as directed by the superintendent, must be promptly honored if accompanied by  
44 the certification of the superintendent that any obligation under this chapter has not

1           been paid when due or that a proceeding in bankruptcy has been initiated by or with  
2           respect to the employer or group in a court of competent jurisdiction.

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

10          Any proceeds from a draw on such an irrevocable standby letter of credit by the  
11          Treasurer of State, as directed by the Superintendent of Insurance, must be held by  
12          the Treasurer of State on behalf of workers' compensation claimants to secure  
13          payment of claims until either the superintendent authorizes the Treasurer of State to  
14          release those proceeds to the employer or group upon provision by the employer or  
15          group of replacement security adequate to meet the requirements for security set by  
16          the superintendent or the superintendent directs distribution of the proceeds in  
17          accordance with this Title.

18          To the extent not inconsistent with state law, the letter of credit is subject to and  
19          governed by the International Standby Practices 1998 or successor practices  
20          governing standby letters of credit duly adopted by the International Chamber of  
21          Commerce. If any legal proceedings are initiated with respect to payment of the  
22          letter of credit, those proceedings are subject to the State's courts and law.

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

37          C. A self-insurer may establish an actuarially determined fully funded trust, funded  
38          at a level sufficient to discharge those obligations incurred by the employer pursuant  
39          to this Act as they become due and payable from time to time, as long as the  
40          Superintendent of Insurance requires that the value of trust assets be at least equal to  
41          the present value of ultimate expected incurred claims and claims settlement costs,  
42          plus required safety margins and, if determined necessary by the superintendent,  
43          administrative costs for the operation of the plan of self-insurance. For the purpose  
44          of determining whether ~~an~~ a group self-insurer's actuarially determined fully funded  
45          trust has a surplus of funds in excess of that required by this subsection, the

1 superintendent shall consider, based upon the group's audit for all completed plan  
2 years, only the following assets held outside the trust account: cash up to \$10,000;  
3 accounts receivable, limited to amounts collected and deposited in the trust account  
4 by the date of the surplus distribution; accrued interest on trust account assets that  
5 will be collected and deposited in the trust account within 6 months from the date of  
6 the surplus determination; tangible assets that will be converted to cash and deposited  
7 in the trust account prior to the distribution date of any surplus; and a letter of credit  
8 to be used to partially fund the trust to the extent allowed under this section and rules  
9 adopted by the superintendent, as supported in the actuarial review. The  
10 superintendent shall consider cash held outside the trust account in excess of \$10,000  
11 if the self-insurer provides, to the superintendent's satisfaction, documentation  
12 regarding why the money is being held outside the trust account. An actuarially  
13 determined fully funded trust must be funded as follows, as determined by the  
14 superintendent.

15 (1) For individual and group self-insurers, the amount of security must be  
16 determined based upon an actuarial review. The actuarial review must take into  
17 consideration the use by a group self-insurer of any irrevocable standby letter of  
18 credit. Except as provided in subparagraph (3), initial funding for each plan year  
19 must be maintained at the 90% or higher confidence level. Funding after the  
20 completion of the initial plan year may be established no lower than the 75%  
21 confidence level if the following has occurred:

22 (a) A year considered for reduction is completed;

23 (b) The supporting actuarial review includes an evaluation of the completed  
24 year experience with claims evaluated not less than 6 months from the end of  
25 the plan year, or in the case of a group self-insurer in existence for at least 36  
26 months, not less than 4 months from the end of the plan year; and

27 (c) For individual self-insurers, prior approval from the superintendent is  
28 obtained.

29 For the purposes of determining the confidence level, all completed years at the  
30 same confidence level may be aggregated. For individual self-insurers, funds  
31 may not be released from the trust or transferred between years except as  
32 approved by the superintendent. The governing body of a group self-insurer may  
33 at any time declare a surplus of funds above the required confidence level, but  
34 may only release funds after the completion of any plan year. The superintendent  
35 may request information regarding any such declaration. Any distribution of  
36 surplus must be based upon an actuarial review of all outstanding obligations for  
37 all completed plan years, an audited financial statement of the group for all  
38 completed plan years and a surplus distribution worksheet for all completed plan  
39 years on a form approved by the superintendent. The group self-insurer must  
40 provide the required information within 10 days after the distribution. Any  
41 surplus declared or distributed pursuant to this paragraph is subject to adjustment  
42 after review by the superintendent within 60 days of the receipt of the required  
43 information. Any deficit below the required confidence level, as determined by  
44 the superintendent, that results from a distribution under this paragraph must be  
45 funded within 45 days from the date of the notice by the superintendent.

1 (2) A group self-insurer may elect to fund at a higher confidence level through  
2 the use of cash, marketable securities or reinsurance. If a member of a group  
3 self-insurer terminates membership in the group for any reason, that member  
4 shall fund the member's proportionate share of the liabilities and obligations of  
5 the trust to the 95% confidence level. If for any reason the departing member  
6 fails to fund the member's proportionate share of the trust's exposure to the 95%  
7 level of confidence, the trust is responsible for that member's liabilities and  
8 obligations to the trust. If the superintendent finds that a material risk to the  
9 trust's ability to satisfy its liabilities and obligations in full exists due to the  
10 failure of one or more departing members to fund the departing members'  
11 proportionate share of those liabilities and obligations to the 95% confidence  
12 level or due to the failure of the group trust to enforce the funding requirement,  
13 the superintendent shall consider the unfunded share of the trust's exposure when  
14 approving a determination of a surplus or deficit in the trust.

15 (3) Subject to prior approval by the superintendent in accordance with  
16 subparagraph (5), a self-insurer that has successfully maintained an actuarially  
17 determined fully funded trust for a period of 5 or more consecutive years may  
18 fund all years, including the prospective fund year, at the 75% or higher  
19 confidence level in the aggregate and a group self-insurer that has successfully  
20 maintained an actuarially determined fully funded trust for a period of 10 or more  
21 consecutive years may fund all years, including the prospective fund year, at the  
22 65% or higher confidence level in the aggregate.

23 (4) Trust assets must consist of cash or marketable securities of a type and risk  
24 character as specified in subsection 9. The trustee shall submit a report to the  
25 superintendent not less frequently than quarterly that lists the assets comprising  
26 the corpus of the trust, including a statement of their market value and the  
27 investment activity during the period covered by the report. The trust must be  
28 established and maintained subject to the condition that trust assets may not be  
29 transferred or revert in any manner to the employer except to the extent that the  
30 superintendent finds that the value of the trust assets exceeds the present value of  
31 incurred claims and claims settlement costs with an actuarially indicated margin  
32 for future loss development. In all other respects, the trust instrument, including  
33 terms for certification, funding, designation of trustee and payout, must be as  
34 approved by the superintendent, except that the value of the trust account must be  
35 actuarially calculated at least annually by a casualty actuary who is a member of  
36 the American Academy of Actuaries and adjusted to the required level of  
37 funding.

38 (5) In determining whether a self-insurer that maintains an actuarially  
39 determined fully funded trust qualifies for a reduction in the required confidence  
40 level pursuant to subparagraph (1) or (3) or is subject to an enhanced confidence  
41 level pursuant to subparagraph (6), the superintendent shall consider the financial  
42 condition of the self-insurer in relation to the potential workers' compensation  
43 liabilities. The factors the superintendent may consider include the self-insurer's  
44 liquidity, leverage, tangible net worth, size and net income. For group self-  
45 insurers, the superintendent's review must be based on the aggregate financial  
46 condition of the group members. At the request of the superintendent, a group

1 self-insurer shall report relevant financial information, on a form prescribed by  
2 the superintendent, at such intervals as the superintendent directs. The  
3 superintendent may establish additional review criteria or procedures by rule.  
4 Rules adopted pursuant to this subparagraph are routine technical rules as defined  
5 in Title 5, chapter 375, subchapter 2-A.

6 (6) If the superintendent determines, based on an evaluation of a self-insurer's  
7 financial condition pursuant to subparagraph (5), that the confidence level at  
8 which the self-insurer has been authorized to fund its trust is not sufficient to  
9 provide adequate security for the self-insurer's reasonably anticipated potential  
10 workers' compensation liabilities, the superintendent shall make a determination  
11 of the appropriate confidence level and order the self-insurer to take prompt  
12 action to increase funding to that level within 60 days.

13 D. Notwithstanding any provision of this chapter, authorization to self-insure may  
14 not be conditioned on a bond or security deposit that is in excess of \$50,000 for the  
15 State, the University of Maine System or any county, city or town with a state-  
16 assessed valuation equal to or in excess of \$300,000,000 and either a bond rating  
17 equal to or in excess of the 2nd highest standard as set by a national bond rating  
18 agency or a net worth equal to or in excess of \$35,000,000. If a county, city or town  
19 that is a self-insurer relies upon a bond rating to qualify under this paragraph, it shall  
20 value or cause to be valued its unpaid workers' compensation claims pursuant to  
21 sound accepted actuarial principles. This value must be incorporated in the annual  
22 audit of the county, city or town, together with disclosure of funds appropriated to  
23 discharge incurred claims expenses.

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

31 F. An employer may be eligible for approved self-insurance status pursuant to this  
32 Act if the employer submits a written guarantee of the obligations incurred pursuant  
33 to this Act, the guarantee to be issued by a United States or Canadian corporation that  
34 is a member of an affiliated group of which the employer is a member, and which  
35 corporation is solvent and demonstrates an ability to pay the compensation and  
36 benefits, and the guarantee is in a form acceptable to the Superintendent of Insurance.  
37 The guarantor shall provide audited annual financial statements and such other  
38 information as the superintendent may require, including quarterly financial  
39 statements, and the employer shall provide a cash deposit, satisfactory securities,  
40 irrevocable standby letters of credit issued by a qualified financial institution or a  
41 surety bond as otherwise required by this Act in an amount not less than \$100,000.  
42 The guarantor is deemed to have submitted to the jurisdiction of the board and the  
43 courts of this State for purposes of enforcing the guarantee. The guarantor, in all  
44 respects, is bound by and subject to the orders, findings, decisions or awards rendered  
45 against the employer for payment of compensation and any penalties or forfeitures  
46 provided under this Act. The superintendent, following hearing, may revoke the self-

1 insured status of the employer if at any time the assets of the guarantor become  
2 impaired or encumbered or are otherwise found to be inadequate to support the  
3 guarantee.

4 G. A subsidiary employer may be eligible for approved self-insurance status  
5 pursuant to this Act if: the subsidiary employer files an application jointly with a  
6 qualified parent corporation that has direct ownership of a majority voting interest of  
7 the subsidiary employer; the parent corporation and subsidiary employer submit an  
8 irrevocable contract of assignment, on a form approved by the Superintendent of  
9 Insurance, of the subsidiary employer's obligations incurred pursuant to this Act; the  
10 parent corporation is solvent and demonstrates an ability to pay the compensation and  
11 benefits of the subsidiary employer; and the subsidiary employer meets all other  
12 requirements for application and qualification as a self-insurer under this chapter and  
13 under any applicable rules adopted by the superintendent. If the parent corporation is  
14 not a United States corporation, the superintendent may, in the superintendent's sole  
15 discretion, establish the conditions of any approval of the foreign parent corporation  
16 or deny the application of the foreign parent corporation. As part of its application  
17 for approval, a foreign parent corporation must provide the following information to  
18 the superintendent: evidence that its country of domicile has substantially similar  
19 laws with respect to submission to the jurisdiction of the board and the courts of this  
20 State for the purposes of payment of workers' compensation claims of the subsidiary  
21 employer; audited financial statements, as otherwise required by this Act, prepared in  
22 the English language by a certified public accountant licensed in a state in the United  
23 States in accordance with generally accepted auditing standards as prescribed by the  
24 American Institute of Certified Public Accountants; and security, as otherwise  
25 required by the Act, in United States currency. The irrevocable contract of  
26 assignment and application must be signed by a duly authorized officer of each  
27 corporation and the application must include a board of directors' resolution from  
28 each entity as evidence of each officer's authority to enter into the contract. The  
29 superintendent may determine the subsidiary employer's eligibility for self-insurance  
30 authority and the amount of required security based upon the parent corporation's  
31 consolidated financial statement, as long as the employer complies with paragraph H.  
32 A subsidiary employer currently authorized to self-insure need not pay the  
33 application fee required of a new applicant in order to file an application to qualify  
34 under this subsection, but the subsidiary employer and parent corporation must  
35 provide all information required under this subsection as if they were a new  
36 applicant. Once the subsidiary employer becomes authorized to self-insure under this  
37 section, the parent corporation assumes liability for all prior workers' compensation  
38 liabilities incurred by the subsidiary employer during the period of self-insurance  
39 prior to the date of authorization under this subsection, unless the subsidiary  
40 employer files an alternative plan approved by the superintendent. The parent  
41 corporation and the subsidiary employer must both be named on the certificate of  
42 authorization for self-insurance authority. Upon issuance of a certificate of  
43 authorization pursuant to this subsection, the following applies.

- 44 (1) The parent corporation is deemed to have submitted to the jurisdiction of the  
45 board and the courts of the State for the purposes of payment of workers'  
46 compensation claims of the subsidiary employer and is deemed to have submitted  
47 to the jurisdiction of the superintendent for purposes of implementation of this



1 Act. The parent corporation, in all respects, is bound by and subject to all orders,  
2 findings, decisions or awards rendered against the subsidiary employer for  
3 payment of compensation and any penalties or forfeitures provided under this  
4 Act.

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

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

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

31 H. Each individual self-insurer shall submit with its application, and not less  
32 frequently than annually thereafter, a financial statement of current origin that has  
33 been audited by a certified public accountant. When a self-insurer qualifies on the  
34 basis of a financial guarantee or on the basis of an irrevocable contract of assignment,  
35 the Superintendent of Insurance may accept an audited financial statement of the  
36 guarantor or parent corporation in satisfaction of this requirement and may also  
37 require combining statements provided in an array that is reconciled to the  
38 consolidated report.

39 **Sec. 2. 39-A MRSA §403, sub-§5, ¶A**, as amended by PL 1995, c. 594, §2, is  
40 further amended to read:

41 A. Any group of employers may adopt a plan for self-insurance, as a group, for the  
42 payment of compensation under this Act to their employees. A group may not be  
43 approved to operate a self-insurance plan in the form of a corporation, partnership or  
44 limited liability company. Under a group self-insurance plan the group shall assume

1 the liability of all the employers within the group and pay all compensation for which  
2 the employers are liable under this chapter. When the plan is adopted, the group shall  
3 furnish satisfactory proof to the Superintendent of Insurance of its financial ability to  
4 pay the compensation for the employers in the group and its revenues, their source  
5 and assurance of continuance. ~~The superintendent shall require the deposit with the~~  
6 ~~board of such securities as the superintendent determines necessary of the kind~~  
7 ~~prescribed in subsection 9 or the filing of a bond issued by a surety company~~  
8 ~~authorized to transact business in this State, in an amount to be determined to secure~~  
9 ~~its liability to pay the compensation of each employer as above provided in~~  
10 ~~accordance with subsection 9. The surety bond must be approved as to form by the~~  
11 ~~superintendent. The superintendent may also require that any agreements, contracts~~  
12 ~~and other pertinent documents relating to the organization of the employers in the~~  
13 ~~group be filed with the superintendent at the time the application for group self-~~  
14 ~~insurance is made. The application must be on a form prescribed by the~~  
15 ~~superintendent. The superintendent has the authority to deny the application of the~~  
16 ~~group to pay the compensation for failure to satisfy any applicable requirement of this~~  
17 ~~section. The superintendent shall approve or disapprove an application within 90~~  
18 ~~days. The group qualifying under this paragraph is referred to as a self-insurer.~~

19 **Sec. 3. 39-A MRSA §403, sub-§5, ¶A-1** is enacted to read:

20 A-1. A group self-insurer shall maintain an actuarially determined fully funded trust  
21 in compliance with subsection 3, paragraph C, except that, with the approval of the  
22 Superintendent of Insurance, an affiliated group self-insurer may secure the liabilities  
23 of each member employer in accordance with this paragraph.

24 (1) An affiliated group self-insurer shall designate a principal member, subject to  
25 the approval of the superintendent. The principal member must be the direct or  
26 indirect parent company of every other group member.

27 (2) If the principal member does not have employees in the State, the principal  
28 member must meet the same qualifications as a subsidiary employer applying to  
29 become an individual self-insurer under subsection 3, paragraph G, except that  
30 direct majority ownership is not required and the group's indemnity agreement is  
31 deemed to meet the requirement for an irrevocable contract of assignment.

32 (3) Unless otherwise ordered by the superintendent, the principal member may  
33 provide security for the affiliated group self-insurer's obligations in the same  
34 form and amount as the security required for an individual self-insurer, based on  
35 the financial condition of the principal member and the aggregate self-insurance  
36 exposure of the group.

37 **Sec. 4. 39-A MRSA §403, sub-§5, ¶D**, as amended by PL 2011, c. 180, §2, is  
38 further amended to read:

39 D. If for any reason the status of a group self-insurer under this paragraph is  
40 terminated, the securities, the surety bond, the letter of credit or the deposit security  
41 required by this section ~~continues~~ must continue to be held by the Superintendent of  
42 Insurance or Treasurer of State in accordance with this section and remains subject to  
43 the control of the board until all claims ~~secured by the securities, surety bond, letter~~

1 of credit or deposit against the group self-insurer have been discharged. When all  
2 such claims have been discharged or after such period as the Superintendent of  
3 Insurance determines proper, the superintendent may accept in lieu thereof, and for  
4 the additional purpose of securing such further and future contingent liability as may  
5 arise from prior injuries to workers and be incurred by reason of any change in the  
6 condition of such workers warranting the board making subsequent awards for  
7 payment of additional compensation, a policy of insurance furnished by the group  
8 self-insurer, its successor or assigns or other entity carrying on or liquidating such  
9 self-insurance group. The policy must be in a form approved by the superintendent  
10 and issued by any insurance company licensed to issue this class of insurance in the  
11 State. It may only be issued for a single complete premium payment in advance by  
12 the group self-insurer. It must be given in an amount determined by the  
13 superintendent and when issued is noncancellable for any cause during the  
14 continuance of the liability secured and so covered.

15 **Sec. 5. 39-A MRSA §403, sub-§10**, as enacted by PL 1991, c. 885, Pt. A, §8 and  
16 affected by §§9 to 11, is amended to read:

17 **10. Form of reinsurance contracts.** All reinsurance contracts issued or renewed  
18 after the effective date of this subsection must be issued by companies that meet the  
19 requirements of subsection 11 and must name ~~the self-insurer and~~ the Maine Self-  
20 Insurance Guarantee Association as ~~coinsureds to the extent of their respective interests~~  
21 an additional insured. These reinsurance contracts must recognize the Maine Self-  
22 Insurance Guarantee Association's rights of recovery, within the terms of coverage  
23 provided by the contract, for payments made by the association to or on behalf of  
24 claimants regarding covered claims and for claims in the course of settlement, the value  
25 of which when reduced to payments will create an obligation on the part of the  
26 reinsurance carrier to reimburse the association to the extent of funds disbursed by the  
27 association to discharge covered claims. The requirements of this subsection apply to any  
28 reinsurance contract issued to any individual or group self-insurer as part of a self-  
29 insurance program approved for use within this State and are in addition to any other  
30 requirement applicable to reinsurance contracts imposed by law or rule.

31 Reinsurance contracts must further specify that the reinsurance carrier and the Maine  
32 Self-Insurance Guarantee Association may enter into agreements on the terms of  
33 settlement and distribution of benefits accruing to claimants within the limits of the  
34 authority of the parties to make settlements with respect to any coverage year.

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

41 **Sec. 6. 39-A MRSA §403, sub-§14, ¶H-1** is enacted to read:

42 H-1. A member of a group self-insurer and a successor employer of a member of a  
43 group self-insurer may apply for continuing membership in the group self-insurer,  
44 subject to the approval of the Superintendent of Insurance and the group self-insurer.

1 in accordance with procedures established by the group self-insurer. The procedures  
2 established by the group self-insurer must include requirements the superintendent  
3 determines are substantially similar to the relevant provisions of paragraphs C and D.  
4 As long as the successor employer remains a member in good standing and has fully  
5 assumed the former member's obligations, the former member may not be treated as a  
6 departing member for purposes of enhanced security requirements under subsection  
7 3, paragraph C, subparagraph (2).

8

## SUMMARY

9 This bill amends the workers' compensation laws governing self-insurers. It requires  
10 a group self-insurer that provides an irrevocable standby letter of credit as security to file  
11 with the Superintendent of Insurance a letter of credit and other agreements or documents  
12 relating to the employer's reimbursement obligations.

13 The bill amends the workers' compensation laws governing the participation of  
14 employers in a group self-insurance plan. It requires a group self-insurer to maintain an  
15 actuarially determined fully funded trust as security for self-insurance, except that the  
16 Superintendent of Insurance may authorize an affiliated group self-insurer meeting  
17 certain requirements to secure the liabilities of each of its members. It requires that if the  
18 status of a group self-insurer is terminated the required security remains subject to the  
19 control of the Workers' Compensation Board until claims against the group self-insurer  
20 have been discharged.

21 The bill removes a requirement that reinsurance contracts name the self-insurer as a  
22 coinsured with the Maine Self-Insurance Guarantee Association. It also authorizes a  
23 member of a group self-insurer and a successor employer of a member to apply for  
24 continuing membership in the group self-insurer.