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Legislative Document

No. 706

S.P. 255

In Senate, February 26, 2013

An Act To Amend the Workers' Compensation Self-insurance Laws

Reference to the Committee on Insurance and Financial Services suggested and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator TUTTLE of York.

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

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

4 C. A self-insurer may establish an actuarially determined fully funded trust, funded
5 at a level sufficient to discharge those obligations incurred by the employer pursuant
6 to this Act as they become due and payable from time to time, as long as the
7 Superintendent of Insurance requires that the value of trust assets be at least equal to
8 the present value of ultimate expected incurred claims and claims settlement costs,
9 plus required safety margins and, if determined necessary by the superintendent,
10 administrative costs for the operation of the plan of self-insurance. For the purpose
11 of determining whether an actuarially determined fully funded trust has a surplus of
12 funds in excess of that required by this subsection, the superintendent shall consider,
13 based upon the group's audit for all completed plan years, only the following assets
14 held outside the trust account: cash up to \$10,000; accounts receivable, limited to
15 amounts collected and deposited in the trust account by the date of the surplus
16 distribution; accrued interest on trust account assets that will be collected and
17 deposited in the trust account within 6 months from the date of the surplus
18 determination; tangible assets that will be converted to cash and deposited in the trust
19 account prior to the distribution date of any surplus; and a letter of credit to be used to
20 partially fund the trust to the extent allowed under this section and rules adopted by
21 the superintendent, as supported in the actuarial review. The superintendent shall
22 consider cash held outside the trust account in excess of \$10,000 if the self-insurer
23 provides, to the superintendent's satisfaction, documentation regarding why the
24 money is being held outside the trust account. An actuarially determined fully
25 funded trust must be funded as follows, as determined by the superintendent.

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

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

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

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

40 For the purposes of determining the confidence level, all completed years at the
41 same confidence level may be aggregated. For individual self-insurers, funds
42 may not be released from the trust or transferred between years except as
43 approved by the superintendent. The governing body of a group self-insurer may

1 at any time declare a surplus of funds above the required confidence level, but
2 may only release funds after the completion of any plan year. The superintendent
3 may request information regarding any such declaration. Any distribution of
4 surplus must be based upon an actuarial review of all outstanding obligations for
5 all completed plan years, an audited financial statement of the group for all
6 completed plan years and a surplus distribution worksheet for all completed plan
7 years on a form approved by the superintendent. The group self-insurer must
8 provide the required information within 10 days after the distribution. Any
9 surplus declared or distributed pursuant to this paragraph is subject to adjustment
10 after review by the superintendent within 60 days of the receipt of the required
11 information. Any deficit below the required confidence level, as determined by
12 the superintendent, that results from a distribution under this paragraph must be
13 funded within 45 days from the date of the notice by the superintendent.

14 (2) A group self-insurer may elect to fund at a higher confidence level through
15 the use of cash, marketable securities or reinsurance. If a member of a group
16 self-insurer terminates membership in the group for any reason, that member
17 shall fund the member's proportionate share of the liabilities and obligations of
18 the trust to the 95% confidence level. If for any reason the departing member
19 fails to fund the member's proportionate share of the trust's exposure to the 95%
20 level of confidence, the trust is responsible for that member's liabilities and
21 obligations to the trust. If the superintendent finds that a material risk to the
22 trust's ability to satisfy its liabilities and obligations in full exists due to the
23 failure of one or more departing members to fund the departing members'
24 proportionate share of those liabilities and obligations to the 95% confidence
25 level or due to the failure of the group trust to enforce the funding requirement,
26 the superintendent shall consider the unfunded share of the trust's exposure when
27 approving a determination of a surplus or deficit in the trust.

28 (3) Subject to prior approval by the superintendent in accordance with
29 subparagraph (5), a self-insurer that has successfully maintained an actuarially
30 determined fully funded trust for a period of 5 or more consecutive years may
31 fund all years, including the prospective fund year, at the 75% or higher
32 confidence level in the aggregate and a group self-insurer that has successfully
33 maintained an actuarially determined fully funded trust for a period of 10 or more
34 consecutive years may fund all years, including the prospective fund year, at the
35 65% or higher confidence level in the aggregate.

36 (4) Trust assets must consist of cash or marketable securities of a type and risk
37 character as specified in subsection 9. The trustee shall submit a report to the
38 superintendent not less frequently than quarterly that lists the assets comprising
39 the corpus of the trust, including a statement of their market value and the
40 investment activity during the period covered by the report. The trust must be
41 established and maintained subject to the condition that trust assets may not be
42 transferred or revert in any manner to the employer except to the extent that the
43 superintendent finds that the value of the trust assets exceeds the present value of
44 incurred claims and claims settlement costs with an actuarially indicated margin
45 for future loss development. In all other respects, the trust instrument, including
46 terms for certification, funding, designation of trustee and payout, must be as

1 approved by the superintendent, except that the value of the trust account must be
2 actuarially calculated at least annually by a casualty actuary who is a member of
3 the American Academy of Actuaries and adjusted to the required level of
4 funding.

5 (5) In determining whether a self-insurer that maintains an actuarially
6 determined fully funded trust qualifies for a reduction in the required confidence
7 level pursuant to subparagraph (1) or (3) or is subject to an enhanced confidence
8 level pursuant to subparagraph (6), the superintendent shall consider the financial
9 condition of the self-insurer in relation to the potential workers' compensation
10 liabilities. The factors the superintendent may consider include the self-insurer's
11 liquidity, leverage, tangible net worth, size and net income. For group self-
12 insurers, the superintendent's review must be based on the aggregate financial
13 condition of the group members. A group self-insurer that has been in existence
14 for 5 years or more and is a member of a reinsurance account approved pursuant
15 to subsection 4-A and that secures reinsurance with an attachment point of
16 \$1,000,000 or less and that has assets subject to joint and several liability of at
17 least \$40,000,000 is deemed to qualify for the 65% confidence level under
18 subparagraph (3) if the group self-insurer presents an actuarial opinion that
19 funding at the 65% confidence level is sufficient. At the request of the
20 superintendent, a group self-insurer shall report relevant financial information, on
21 a form prescribed by the superintendent, at such intervals as the superintendent
22 directs. The superintendent may establish additional review criteria or
23 procedures by rule. Rules adopted pursuant to this subparagraph are routine
24 technical rules as defined in Title 5, chapter 375, subchapter 2-A.

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

32 SUMMARY

33 This bill specifies that a group self-insurer that is part of a reinsurance account that
34 has net assets of at least \$40,000,000 and that obtains reinsurance coverage with an initial
35 attachment point of no greater than \$1,000,000 has sufficient assets in the aggregate to
36 qualify for funding the group's workers' compensation exposures at the 65% level of
37 confidence.