

Maine Revised Statutes
Title 39-A: WORKERS' COMPENSATION
Chapter 9: INSURANCE AND SELF-INSURANCE

§404. MAINE SELF-INSURANCE GUARANTEE ASSOCIATION

1. Created; purpose. There is created the Maine Self-Insurance Guarantee Association, a nonprofit unincorporated legal entity referred to in this section as the "association," to provide mechanisms for the payment of covered claims under self-insurance coverage, to avoid excessive delay in payment, to avoid financial loss to claimants because of the insolvency of a self-insurer and to assist, when called upon to do so by the Superintendent of Insurance, in the detection of self-insurer insolvencies. It is declared that the Maine Self-Insurance Guarantee Association is an instrumentality of the State, but the debts and liabilities of the association do not constitute debts and liabilities of the State.

[1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF) .]

2. Membership required. All self-insurers, under this Title, must be members of the association as a condition of authority to self-insure in this State, except public employers that are individual self-insurers and qualify for the alternative security requirements of section 403, subsection 3, paragraph D and group self-insurers whose membership consists exclusively of public employers and whose members have in the aggregate a state-assessed valuation equal to or in excess of \$5,000,000,000. 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 is 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 36-month period immediately preceding the insolvency in question. [1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF).]

B. A self-insurer is 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 that occurred prior to the date the self-insurer joined the association are not included under this paragraph; or
- (2) The self-insurer becomes insolvent after leaving the association, but claims relating to a compensable event that occurred prior to the date the self-insurer joined the association are not included under this paragraph, and claims relating to a compensable event that occurred after the self-insurer ceased to be an approved self-insurer are not afforded coverage under this paragraph. [1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF) .]

C. In determining the membership of the association pursuant to paragraphs A and B, no employer claiming self-insurer status may be deemed to be a member of the association, unless that employer is at that time registered as a self-insurer by the Superintendent of Insurance pursuant to section 403, subsection 16. [1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF) .]

D. In determining membership in the association for the purposes of annual postinsolvency assessments, a successor employer approved for continuing self-insurance authority under section 403, subsection 14 or a successor employer qualifying and receiving a refund under section 403, subsection 14, paragraph H, subparagraph (1) is deemed to be a member of the association from the date of the former employer's initial self-insurance authorization. [1995, c. 594, §7 (NEW).]

E. In determining membership in the association for the purposes of annual or postinsolvency assessments, an employer that ceases to be an approved self-insurer under this Act at the time an insolvency occurs or has occurred, or during the 36-month period immediately preceding an insolvency, continues to be a member of the association for the purposes of annual or postinsolvency assessments even if that employer is acquired or merges with another entity, dissolves, ceases to do business in the State or otherwise changes business form resulting in a new legal entity. An employer qualifying for membership under this paragraph shall notify the Maine Self-Insurance Guarantee Association of all changes affecting ownership and provide information necessary for the association to be able to levy assessments. In addition to any other remedies provided by law, the superintendent is authorized to issue an order amending the terms and conditions of the termination plan of any former self-insurer in order to enforce this paragraph. [1995, c. 594, §7 (NEW).]

[1997, c. 126, §10 (AMD) .]

3. Board of directors. The board of directors of the association consists of at least 7 persons serving terms as established in the plan of operation pursuant to subsection 5. The members of the board must be selected by the member self-insurers, subject to the approval of the Superintendent of Insurance. Vacancies on the board must be filled for the remaining period of the term in the same manner as initial appointments, except that vacancies may be filled by majority vote of the remaining directors, subject to the approval of the superintendent, until the next annual meeting of the members.

In approving selections to the board, the superintendent shall consider among other things whether all member self-insurers are fairly represented.

Members of the board may be reimbursed from the assets of the association for expenses incurred by them as members of the board of directors.

[1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF) .]

4. Powers and duties of association. The powers and duties of the association are as follows.

A. The association:

(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 that prior year based on actual audited annual standard premium;

(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 that prior year based on actual audited annual standard premium;

(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;

(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). 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), division (f) and interest income. In the event the fund drops below \$2,000,000, and if the association determines it necessary in order to carry out the purpose of this section, the association is authorized to levy annual assessments as required in subparagraph (2) in addition to postinsolvency assessments as required by paragraph C. 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 postassessment 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;

(4) Is 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 by the self-insurer as otherwise required under this Title. Nothing in this section obligates the association to pay claims against a self-insurer that are not or have not been paid as a result of a determination of insolvency or the institution of bankruptcy or receivership proceedings that occurred prior to the effective date of this section.

(a) For the purposes of this subsection, "covered claim" means an unpaid claim against an insolvent self-insurer that relates to an injury that occurs while the self-insurer is a member of the association and that is compensable under this Act;

(5) After paying any claim resulting from a self-insurer's insolvency, is subrogated to the rights of the injured employee and dependents and is 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) Shall 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 chapter;

(7) Shall 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 an insolvent self-insurer was a party to determine the extent to which such settlements may be properly contested;

(8) Shall notify the persons that the Superintendent of Insurance directs under subsection 7;

(9) Shall 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 of Insurance, but designation of a member self-insurer as a servicing facility may be declined by such self-insurer;

(10) Shall 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;

(11) Shall pay the other expenses of the association authorized by this section; and

(12) Shall 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 that are different from a calendar year. [1997, c. 126, §11 (AMD).]

B. The association may:

(1) Employ or retain such persons as are necessary to handle claims and perform other duties of the association;

(2) Borrow funds necessary to effect the purposes of this chapter in accord with the plan of operation;

(3) Sue or be sued;

(4) Negotiate and become a party to such contracts as are necessary to carry out the purpose of this section; and

(5) Perform such other acts as are necessary or proper to effectuate the purpose of this section. [1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF).]

C. The following pertains to postinsolvency assessment.

(1) In the event the assets of the fund are not sufficient to pay the obligations of the association, the association shall make an additional assessment as follows.

(a) Each individual self-insurer must be assessed an amount not in excess of 4% each year of the annual standard premium that would have been paid by the individual self-insurer during the prior calendar year. The assessments of each member individual self-insurer must be in the proportion that the annual standard premium of the individual self-insurer for the preceding calendar year bears to the annual standard premium of all member self-insurers for the preceding calendar year.

(b) Each group self-insurer must be assessed an amount not in excess of .2% each year 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. The assessments of each member group self-insurer must be in the proportion that the annual standard premium of the group self-insurer for the preceding calendar year bears to the annual standard premium of all member self-insurers for the preceding calendar year.

(2) Each member self-insurer must be notified of the assessment no later than 30 days before it is due.

(3) The association may exempt or defer, in whole or in part, the assessment of any member self-insurer, if the assessment would cause that member's financial statement to reflect liabilities in excess of assets.

(4) Delinquent assessments, except as provided in subparagraph (3), must bear interest at the rate to be established by the board, but not exceed the discount rate of the Federal Reserve Bank, Boston, Massachusetts, on the due date of the assessment, plus 4% annually, computed from the due date of the assessment.

(5) The association shall establish in the plan of operations a mechanism to calculate the assessments required by subparagraph (1) by a simple and equitable means to convert from policy or fund years that are different from a calendar year. [2001, c. 224, §2 (AMD).]

D. An individual self-insurer may not be assessed in any calendar year an amount greater than 4% of the annual standard premium that would have been paid by that self-insurer during the prior calendar year. A group self-insurer may not be assessed in any calendar year an amount greater than .25% 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. If the maximum assessment does not provide in any one year an amount sufficient to make all necessary payments, the association shall secure financing as provided for in the plan of operation.

There must be established in the plan of operations a mechanism to calculate the assessments required by this section by a simple and equitable means to convert from a policy or a fund year that is different from a calendar year. [2001, c. 224, §2 (AMD).]

E. For the purposes of this subsection, "annual standard premium for an individual self-insurer" means the annual premium produced by applying the advisory loss costs multiplied by 1.2, rating rules, excluding any premium discount, and experience rating procedure approved by the Superintendent of Insurance for the designated workers' compensation advisory organization pursuant to Title 24-A, section 2382-B, to the exposure and experience of the individual self-insurer. [1993, c. 491, §2 (AMD).]

F. For the purposes of this subsection, "annual standard premium for a group self-insurer" means the total annual premium that would have been paid by all members of that group using the advisory loss costs multiplied by 1.2, rating rules, excluding any premium discount, and experience rating procedure approved by the Superintendent of Insurance for the designated workers' compensation advisory organization pursuant to Title 24-A, section 2382-B, to the exposure and experience of the self-insurance group members. [1993, c. 491, §2 (AMD).]

[2001, c. 224, §2 (AMD).]

5. Plan of operation. The plan of operation is as follows.

A. The association shall submit to the Superintendent of Insurance a plan of operation and any amendments to it that are necessary to ensure the fair, reasonable and equitable administration of the association. The plan of operation and any amendments to it become effective upon approval in writing by the superintendent. If the association fails to submit a suitable plan of operation or if the association fails to submit suitable amendments to the plan, the superintendent shall, after notice and hearing, adopt rules that are necessary to administer this section. These rules continue in force until modified by the superintendent or the rules are superseded by a plan submitted by the association and approved by the superintendent. [1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF).]

B. All member self-insurers shall comply with the plan of operation. [1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF).]

C. The plan of operation must:

(1) Establish the procedures by which all the powers and duties of the association under subsection 4 will be performed;

- (2) Establish procedures for handling assets of the association;
- (3) Adopt a reasonable mechanism and procedure to achieve equity in assessing the funds required in subsection 4, paragraph A, subparagraphs (1), (2) and (3); subsection 4, paragraph C, subparagraph (1); and subsection 4, paragraph D.
Consideration must be given to adjustments for audited payroll, differential effects caused by rate changes and other relevant factors;
- (4) Establish the amount and method of reimbursing members of the board of directors under subsection 3;
- (5) Establish procedures by which claims may be filed with the association and establish acceptable forms of proof of covered claims. A list of such claims must be periodically submitted to the association;
- (6) Establish regular places and times for meetings of the board of directors;
- (7) Establish procedures for records to be kept of all financial transactions of the association, its agents and the board of directors;
- (8) Provide that any member self-insurer aggrieved by any final action or decision of the association may appeal to the Superintendent of Insurance within 30 days after the action or decision;
- (9) Establish the procedures by which selections for the board of directors are submitted to the Superintendent of Insurance; and
- (10) Contain additional provisions necessary or proper for the execution of the powers and duties of the association. [1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF).]

[1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF) .]

6. Insolvency. A self-insurer is insolvent for the purposes of this section under the following circumstances:

- A. Determination of insolvency by a court of competent jurisdiction; or [1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF).]
- B. Institution of bankruptcy proceedings by or regarding the member self-insurer. [1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF).]

[1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF) .]

7. Powers and duties of superintendent. The powers and duties of the Superintendent of Insurance are as follows.

A. The Superintendent of Insurance shall notify the association of the existence of an insolvent member self-insurer within 30 days of the date the superintendent receives notice of an insolvency pursuant to the standards set forth in subsection 6. [1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF).]

B. The Superintendent of Insurance may:

- (1) Require that the association notify the insureds of the insolvent self-insurer and any other interested parties of the insolvency and of their rights under this section. Such notifications must be made by mail at their last known addresses, when available, but if required information for notification is not available, notice by publication in a newspaper of general circulation in this State is sufficient; and
- (2) Revoke the designation of any servicing facility if the superintendent finds that claims are being handled unsatisfactorily. [1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF).]

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. [1995, c. 398, §6 (NEW).]

D. On or before May 15th of each year, the Bureau of Insurance shall provide to the Maine Self-Insurance Guarantee Association the annual standard workers' compensation premium for each individual and group workers' compensation self-insurer and each individual and group workers' compensation self-insurer's payroll by class and experience modification factor for the previous calendar year. For the purposes of this paragraph, the definitions of annual standard premium in subsection 4 apply. The Maine Self-Insurance Guarantee Association may request additional information from workers' compensation self-insurers to verify the accuracy of the amounts reported. [1997, c. 126, §12 (NEW).]

[1997, c. 126, §12 (AMD) .]

8. Examination of association. The association is subject to examination and regulation by the Superintendent of Insurance. The board of directors shall submit, by March 30th of each year, a financial report for the preceding calendar year in a form approved by the superintendent.

[1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF) .]

9. Tax exemption. The association is exempt from payment of all fees and all taxes levied by this State or any of its subdivisions, except taxes levied on real or personal property.

[1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF) .]

10. Immunity. There is no liability on the part of, and a cause of action of any nature does not arise against, any member self-insurer, the association or its agents or employees, the board of directors or its individual members, or the Superintendent of Insurance or the superintendent's representatives for any acts or omissions taken by them in the performance of their powers and duties under this chapter. The immunity established by this subsection does not extend to willful neglect or malfeasance that would otherwise be actionable.

[1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF) .]

11. Nonduplication of recovery. Any person having a covered claim that may be recovered under more than one insurance or self-insurance guarantee association or its equivalent shall seek recovery first from the association of the place of residence of the claimant. Any recovery under this section must be reduced by the amount of recovery from any other insurance guarantee association or its equivalent.

[1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF) .]

12. Stay of proceedings. All proceedings under this Act to which the insolvent insurer is a party either before the board or a court in this State and the running of all time periods against either the insolvent self-insurer or the association under this Act are stayed for 60 days from the date of notice to the association of the insolvency in order to permit the association to investigate, prosecute or defend properly any petition, claim or appeal under this Act. The payment of weekly compensation for incapacity under former Title 39, section 54, 54-A, 54-B, 55, 55-A, 55-B, 56, 56-A, or 56-B or under section 212 or 213 must be made during the time periods in which proceedings affecting the payment of weekly compensation are stayed.

[1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF) .]

13. Disposition of assets upon dissolution. In the event of dissolution of the association, all assets remaining after provision for satisfaction of all outstanding claims must be distributed to the Treasurer of State for establishment of a reserve to satisfy potential claims against the association and, when all claims are satisfied, for inclusion in the general assets of the State.

[1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF) .]

14. Statistical advisory organization.

[2011, c. 83, §3 (RP) .]

SECTION HISTORY

1991, c. 885, §A8 (NEW). 1991, c. 885, §§A9-11 (AFF). 1993, c. 491, §2 (AMD). 1993, c. 610, §3 (AMD). 1995, c. 398, §§5,6 (AMD). 1995, c. 594, §§7,8 (AMD). 1997, c. 126, §§10-12 (AMD). 2001, c. 224, §2 (AMD). 2011, c. 83, §3 (AMD).

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