

STATE OF MAINE

—  
IN THE YEAR OF OUR LORD  
TWO THOUSAND TWENTY-FIVE

—  
S.P. 484 - L.D. 1195

**An Act to Amend the Provisions of the Maine Workers' Compensation Act of 1992 Governing Requirements for Self-insurers**

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

**Sec. 1. 39-A MRSA §403, sub-§3**, as amended by PL 2017, c. 401, §1, is further amended by amending the first blocked paragraph to read:

Except as provided in subsection 5, paragraph A-1, 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. ~~Unless disapproved by the superintendent pursuant to paragraph C, subparagraphs (5) and (6), 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, is at least equal to the present value, evaluated to the 65% confidence level, of ultimate incurred claims, claims settlement costs and, if determined necessary by the superintendent, administrative costs.~~

**Sec. 2. 39-A MRSA §403, sub-§3, ¶A**, as amended by PL 2017, c. 401, §1, is further amended by amending the 3rd blocked paragraph to read:

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 or group and may not in any way be contingent on reimbursement by the employer or group. 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 or group shall obtain a new irrevocable standby letter of credit from a qualified financial institution

or shall provide other eligible security of equal value approved by the Superintendent of Insurance. The irrevocable standby letter of credit is automatically extended for one year from the date of expiration unless, at least 90 days prior to any expiration date, the issuing financial institution notifies the Superintendent of Insurance that the financial institution elects not to renew the irrevocable standby letter of credit.

**Sec. 3. 39-A MRSA §403, sub-§3, ¶A**, as amended by PL 2017, c. 401, §1, is further amended by amending the 4th blocked paragraph to read:

~~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 or group in a court of competent jurisdiction.~~

**Sec. 4. 39-A MRSA §403, sub-§3, ¶A**, as amended by PL 2017, c. 401, §1, is further amended by repealing the 5th blocked paragraph.

**Sec. 5. 39-A MRSA §403, sub-§3, ¶A**, as amended by PL 2017, c. 401, §1, is further amended by repealing the 6th blocked paragraph.

**Sec. 6. 39-A MRSA §403, sub-§3, ¶A**, as amended by PL 2017, c. 401, §1, is further amended by repealing the 7th blocked paragraph.

**Sec. 7. 39-A MRSA §403, sub-§3, ¶A-1** is enacted to read:

A-1. The Superintendent of Insurance may instruct the Treasurer of State to draw on an irrevocable standby letter of credit if:

- (1) Any obligation under this chapter has not been paid by the employer or group when due;
- (2) A proceeding in bankruptcy has been initiated by or with respect to the employer or group in a court of competent jurisdiction; or
- (3) The following conditions have been met:
  - (a) The superintendent has received notice that that the financial institution elects not to renew the irrevocable standby letter of credit;
  - (b) The self-insurer has had at least 15 days' notice to replace the security with other eligible security of equal value approved by the superintendent; and
  - (c) The self-insurer has not replaced the irrevocable standby letter of credit with a new letter of credit or other approved security.

The issuing financial institution shall promptly honor a draft on an irrevocable standby letter presented by the Treasurer of State. Any proceeds from a draw on such an irrevocable standby letter of credit by the treasurer must be held by the treasurer on behalf of workers' compensation claimants to secure payment of claims until either the superintendent authorizes the treasurer to release those proceeds to the employer or group upon provision by the employer or group 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 International Standby Practices 1998 or successor practices governing standby letters of credit duly adopted by the International Chamber of Commerce. 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.

**Sec. 8. 39-A MRSA §403, sub-§3, ¶C**, as amended by PL 2017, c. 401, §1, is further amended to read:

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 unencumbered 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. For the purpose of determining whether a group self-insurer's ~~actuarially determined fully funded trust has a surplus of funds in excess of that~~ is fully funded as required by this subsection, the superintendent shall consider, based upon the group's audit for all completed plan years, only the following assets held outside the trust account: cash up to \$10,000; accounts receivable, limited to amounts collected and deposited in the trust account by the date of the surplus distribution; accrued interest on trust account assets that will be collected and deposited in the trust account within 6 months from the date of the surplus determination; tangible assets that will be converted to cash and deposited in the trust account prior to the distribution date of any surplus; and a letter of credit to be used to partially fund the trust to the extent allowed under this section and rules adopted by the superintendent, as supported in the actuarial review. The superintendent shall consider cash held outside the trust account in excess of \$10,000 if the self-insurer provides, to the superintendent's satisfaction, documentation regarding why the money is being held outside the trust account. 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 review includes an evaluation of the completed year experience with claims evaluated not less than 6 months from the end of the plan year, or in the case of a group self-insurer in existence for at least 36 months, not less than 4 months from the end of the plan year; and

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

(1-A) A group self-insurer may secure its obligations to the confidence level required by the superintendent in the following manner:

(a) The obligations must be secured by an actuarially determined fully funded trust with unencumbered assets at least equal to the present value of ultimate expected incurred claims and claims settlement costs, or such higher amount as the superintendent may require in accordance with subparagraphs (5) and (6); and

(b) The balance may be secured by a letter of credit complying with paragraph A.

(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 trust is responsible for that member's liabilities and obligations to the trust. If the superintendent finds that a material risk to the trust's ability to satisfy its liabilities and obligations in full exists due to the failure of one or more departing members to fund the departing members' proportionate share of those liabilities and obligations to the 95% confidence level or due to the failure of the group trust to enforce the funding requirement, the superintendent shall consider the unfunded share of the trust's exposure when approving a determination of a surplus or deficit in the trust.

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

(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.

(5) In determining whether a self-insurer that maintains an actuarially determined fully funded trust qualifies for a reduction in the required confidence level pursuant to subparagraph (1) or (3) or is subject to an enhanced confidence level pursuant to subparagraph (6), the superintendent shall consider the financial condition of the self-insurer in relation to the potential workers' compensation liabilities. The factors the superintendent may consider include the self-insurer's liquidity, leverage, tangible net worth, size and net income. For group self-insurers, the superintendent's review must be based on the aggregate financial condition of the group members. At the request of the superintendent, a group self-insurer shall report relevant financial information, on a form prescribed by the superintendent, at such intervals as the superintendent directs. The superintendent may establish additional review criteria or procedures by rule. Rules adopted pursuant to this subparagraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

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

**Sec. 9. 39-A MRSA §403, sub-§4-A, ¶L**, as enacted by PL 2009, c. 232, §2, is amended by amending subparagraph (1) to read:

(1) Any out-of-state self-insurer that participates in the account may do so only through participation in a protected cell. An employer or group authorized by the Superintendent of Insurance to self-insure its Maine liabilities pursuant to this

section is considered an out-of-state ~~insurer~~ self-insurer to the extent that it is reinsuring out-of-state liabilities beyond the scope of its Maine self-insurance plan.

**Sec. 10. 39-A MRSA §403, sub-§5, ¶A-1**, as enacted by PL 2017, c. 401, §3, is amended by amending subparagraph (2) to read:

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

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

**11. Qualifications for reinsurance carriers.** A workers' compensation contract or policy issued after ~~the effective date of this section~~ January 1, 1993 may not be recognized by the Superintendent of Insurance in considering the ability of an individual or group self-insurer to fulfill its financial obligations under this Act, unless the contract or policy is issued by an admitted insurance company or a reinsurance company that meets on a continuous basis the requirements of Title 24-A, chapter 9, subchapter ~~III~~ 3 and the reinsurance company has been approved by the superintendent to issue in this State contracts of primary workers' compensation reinsurance, or by Lloyd's of London, a ~~syndicate of unincorporated alien insurers that has established and maintains United States trust funds consistent with the requirements of Title 24-A, chapter 9, subchapter III~~ formally organized association of incorporated underwriters and individual unincorporated underwriters, any one or more of which underwrite and assume as insurer a portion of the risk insured by them as set forth in the contract of insurance. Each contract of primary workers' compensation reinsurance that is proposed for use in this State must be filed for approval in the manner set out in Title 24-A, section 2412. ~~Insofar as is~~ To the extent practicable, a contract so approved may be modified with less than 30 days advance filing notice if the superintendent determines the modifications suggested are not contrary to provisions of Title 24-A, section 2412, this Title or Bureau of Insurance Rule Chapter 250 and are necessary to effect required reinsurance coverage to authorize the self-insurer to operate a plan of workers' compensation self-insurance.

**Sec. 12. 39-A MRSA §403, sub-§14, ¶F-1** is enacted to read:

F-1. After terminating or suspending an authorization for self-insurance in accordance with this subsection, the Superintendent of Insurance shall promptly notify the board and forward to it a copy of the order terminating or suspending the authorization.