

SENATE BILL 763

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2001 Regular Session
(11r2483)

ENROLLED BILL
-- Finance/Economic Matters --

Introduced by **Senator Dorman**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this
____ day of _____ at _____ o'clock, ____ M.

President.

CHAPTER _____

1 AN ACT concerning

2 **Workers' ~~Compensation~~ Compensation - Self-Insurance**
3 **Groups - ~~Regulation~~**

4 FOR the purpose of ~~transferring responsibility for the regulation of workers'~~
5 ~~compensation self insurance groups from the Insurance Commissioner to the~~
6 ~~Workers' Compensation Commission; altering requirements relating to~~
7 ~~minimum levels of contributions, excess insurance coverage, and surety bonds;~~
8 ~~altering the amount of combined net assets that a self insurance group must~~
9 ~~have; altering the assessment that a self insurance group must pay to the~~
10 ~~Self-Insurers' Guaranty Fund; adding to the liabilities of the members of a~~
11 ~~self insurance group that becomes insolvent; altering the conditions for~~
12 ~~terminating or withdrawing from a self insurance group; altering the conditions~~
13 ~~under which a self insurance group's authority to operate may be suspended or~~
14 ~~revoked~~ establishing certain obligations for certain workers' compensation
15 self-insurance groups; defining "insolvent self insurance group" a certain term;
16 requiring the Maryland Insurance Administration to report to certain
17 committees of the General Assembly on or before a certain date; requiring a

1 certain joint committee to perform a certain study and report to the House
 2 Economic Matters and Senate Finance Committees on or before a certain date;
 3 and generally relating to ~~group self insurance for workers' compensation and~~
 4 ~~the regulation and operation of~~ workers' compensation self-insurance groups.

5 BY transferring

6 ~~Article - Insurance~~
 7 ~~Section 25-301 through 25-308 and the subtitle "Subtitle 3. Group~~
 8 ~~Self Insurance for Workers' Compensation", respectively~~
 9 ~~Annotated Code of Maryland~~
 10 ~~(1997 Volume and 2000 Supplement)~~

11 to be

12 ~~Article - Labor and Employment~~
 13 ~~Section 9-4A-01 through 9-4A-08 and the subtitle "Subtitle 4A. Group~~
 14 ~~Self Insurance for Workers' Compensation", respectively~~
 15 ~~Annotated Code of Maryland~~
 16 ~~(1999 Replacement Volume and 2000 Supplement)~~

17 BY repealing and reenacting, with amendments,

18 ~~Article - Labor and Employment~~
 19 ~~Section 9-4A-01 through 9-4A-08~~
 20 ~~Annotated Code of Maryland~~
 21 Article - Insurance
 22 Section 25-301 and 25-304
 23 Annotated Code of Maryland
 24 (1997 Volume and 2000 Supplement)
 25 (1999 Replacement Volume and 2000 Supplement)
 26 (As enacted by Section 1 of this Act)

27 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 28 MARYLAND, That Section(s) ~~25-301 through 25-308 and the subtitle "Subtitle 3.~~
 29 ~~Group Self Insurance for Workers' Compensation", respectively, of Article -~~
 30 ~~Insurance of the Annotated Code of Maryland be transferred to be Section(s) 9-4A-01~~
 31 ~~through 9-4A-08 and the subtitle "Subtitle 4A. Group Self Insurance for Workers'~~
 32 ~~Compensation", respectively, of Article - Labor and Employment of the Annotated~~
 33 ~~Code of Maryland.~~

34 SECTION 2. ~~AND BE IT FURTHER ENACTED;~~ That the Laws of Maryland
 35 read as follows:

Article - Labor and Employment Insurance

Subtitle 4A. Group Self Insurance for Workers' Compensation.

9-4A-01. 25-301.

(a) In this subtitle the following words have the meanings indicated.

(b) "Administrator" means a person engaged by a workers' compensation self-insurance group to carry out the policies established by the self-insurance group and to provide management of the self-insurance group.

(C) "INSOLVENT SELF-INSURANCE GROUP" MEANS A SELF-INSURANCE GROUP THAT CANNOT MEET ITS CURRENT OBLIGATIONS UNDER THE WORKERS' COMPENSATION LAWS OF THIS STATE IN WHICH EACH INDIVIDUAL MEMBER OF THE GROUP IS UNABLE TO MEET THE MEMBER'S DEBTS AS THEY MATURE IN THE ORDINARY COURSE OF BUSINESS, AS DETERMINED BY THE COMMISSIONER.

[(c)] (D) "Self-insurance agreement" means the partnership arrangement between the members of a self-insurance group that defines the rights, obligations, and liabilities of the members of the self-insurance group.

[(d)] (E) (1) "Self-insurance group" means two or more employers organized in accordance with this subtitle.

(2) "Self-insurance group" does not include a governmental self-insurance group organized under § 9-404 of [the Labor and Employment Article] THIS TITLE.

9-4A-02.

An employer may satisfy the requirements of § 9-402 of [the Labor and Employment Article] THIS TITLE by participating in a self-insurance group that meets the requirements of this subtitle.

9-4A-03.

(a) In this section, "service company" means a person that provides services that are not provided by the administrator, including:

- (1) claims adjustment;
- (2) safety engineering;
- (3) compilation of statistics and the preparation of premium, loss, and tax reports;
- (4) preparation of other required self insurance reports;
- (5) development of members' assessments and fees; and

1 (6) ~~administration of a claim fund.~~

2 (b) ~~The [Commissioner] COMMISSION shall adopt regulations to carry out~~
3 ~~this subtitle.~~

4 (e) ~~The regulations shall include:~~

5 (1) ~~classifications of businesses and industries, based on the type of~~
6 ~~activity conducted by the business or industry, within which employers may join~~
7 ~~together in self-insurance groups;~~

8 (2) ~~for each classification:~~

9 (i) ~~a minimum level of contribution [of at least] SET BY THE~~
10 ~~COMMISSION OF NOT LESS THAN \$250,000 in premiums collected from or pledged by~~
11 ~~members of a self-insurance group to a fund from which workers' compensation~~
12 ~~claims will be paid;~~

13 (ii) ~~a minimum level of excess insurance coverage [that must be~~
14 ~~obtained by each self-insurance group] IN THE AMOUNT AND WITH THE PROVISIONS~~
15 ~~THAT THE COMMISSION CONSIDERS NECESSARY TO PROVIDE SECURITY FOR THE~~
16 ~~PAYMENT OF COMPENSATION AND MEDICAL TREATMENT;~~

17 (iii) ~~a requirement that the minimum levels of excess insurance~~
18 ~~adopted under this subtitle may be satisfied by placing, in a depository that the~~
19 ~~[Commissioner] COMMISSION designates, securities in a form and amount that the~~
20 ~~[Commissioner] COMMISSION requires; and~~

21 (iv) ~~a surety bond [of at least] IN AN AMOUNT SET BY THE~~
22 ~~COMMISSION OF NOT LESS THAN \$100,000 that must be obtained by each~~
23 ~~self-insurance group;~~

24 (3) ~~conditions under which contributions by members of a self-insurance~~
25 ~~group may be rebated or temporarily suspended;~~

26 (4) ~~for each administrator or service company, a bond IN AN AMOUNT~~
27 ~~SET BY THE COMMISSION that the [Commissioner] COMMISSION may require in~~
28 ~~addition to any other required bond; and~~

29 (5) ~~a requirement that the governance of the group be under the control~~
30 ~~of its members.~~

31 ~~9-4A-04. 25-304.~~

32 (a) Before a self-insurance group may operate, the self-insurance group must
33 obtain the approval of the ~~[Commissioner] COMMISSION~~, including approval of its
34 self-insurance agreement.

1 (b) Each self-insurance group must have combined net assets of at least
 2 \$1,000,000] ~~IN AN AMOUNT SET BY THE COMMISSION AT NOT LESS THAN \$1~~
 3 ~~MILLION.~~

4 (C) (1) A SELF-INSURANCE GROUP SHALL PAY ALL WORKERS'
 5 COMPENSATION BENEFITS FOR WHICH EACH MEMBER INCURS LIABILITY DURING
 6 ITS PERIOD OF MEMBERSHIP.

7 (2) EACH MEMBER OF A SELF-INSURANCE GROUP IS JOINTLY AND
 8 SEVERALLY LIABLE FOR THE WORKERS' COMPENSATION OBLIGATIONS OF THE
 9 GROUP AND ITS MEMBERS THAT ARE INCURRED DURING ITS PERIOD OF
 10 MEMBERSHIP.

11 (3) A MEMBER WHO ELECTS TO TERMINATE ITS MEMBERSHIP IN OR IS
 12 CANCELED BY A GROUP REMAINS JOINTLY AND SEVERALLY LIABLE FOR WORKERS'
 13 COMPENSATION OBLIGATIONS OF THE GROUP AND ITS MEMBERS WHICH WERE
 14 INCURRED DURING THE CANCELED OR TERMINATED MEMBER'S PERIOD OF
 15 MEMBERSHIP.

16 (4) THE INSOLVENCY OR BANKRUPTCY OF A MEMBER DOES NOT
 17 RELIEVE THE SELF-INSURANCE GROUP OR ANY OTHER MEMBER OF LIABILITY FOR
 18 THE PAYMENT OF WORKERS' COMPENSATION BENEFITS INCURRED DURING THE
 19 INSOLVENT OR BANKRUPT MEMBER'S PERIOD OF MEMBERSHIP.

20 ~~9-4A-05.~~

21 (a) ~~A self-insurance group is not liable for payments to the Property and~~
 22 ~~Casualty Insurance Guaranty Corporation.~~

23 (b) ~~There is a Self Insurers' Guaranty Fund.~~

24 (c) ~~The Uninsured Employers' Fund established under § 10-304 of [the Labor~~
 25 ~~and Employment Article] THIS ARTICLE shall administer the Self Insurers' Guaranty~~
 26 ~~Fund.~~

27 (d) ~~Each self-insurance group shall pay an assessment into the Self Insurers'~~
 28 ~~Guaranty Fund [at the same level assessed against other workers' compensation~~
 29 ~~insurers by the Property and Casualty Insurance Guaranty Corporation under Title~~
 30 ~~9, Subtitle 3 of this article] IN A MANNER AND AMOUNT SET BY THE COMMISSION TO~~
 31 ~~ENSURE THE SOLVENCY OF THE SELF-INSURERS' GUARANTY FUND.~~

32 (e) (1) ~~The Self Insurers' Guaranty Fund shall pay any outstanding~~
 33 ~~obligations of a self-insurance group that becomes insolvent OR IS UNABLE TO MEET~~
 34 ~~ITS CURRENT OBLIGATIONS.~~

35 (2) (1) ~~If the Self Insurers' Guaranty Fund becomes insolvent OR IS~~
 36 ~~UNABLE TO MEET ITS CURRENT OBLIGATIONS, any outstanding obligations of an~~
 37 ~~insolvent self-insurance group [are a joint and several liability of each] SHALL BE~~
 38 ~~PAID BY THE UNINSURED EMPLOYERS' FUND.~~

1 (II) EACH member of the self insurance group SHALL BE JOINTLY
2 AND SEVERALLY LIABLE FOR ANY OBLIGATIONS, INCLUDING ADMINISTRATIVE
3 COSTS, INCURRED BY THE UNINSURED EMPLOYERS' FUND.

4 (3) ANY OBLIGATION OF AN INSOLVENT SELF INSURANCE GROUP PAID
5 BY EITHER THE SELF INSURERS' GUARANTY FUND OR THE UNINSURED EMPLOYERS'
6 FUND IS A JOINT AND SEVERAL LIABILITY OF EACH MEMBER OF THE
7 SELF INSURANCE GROUP.

8 (4) ANY LITIGATION COSTS OR FEES OR ANY OTHER COLLECTION COSTS
9 PAID BY EITHER THE SELF INSURERS' GUARANTY FUND OR THE UNINSURED
10 EMPLOYERS' FUND IN RECOVERING OUTSTANDING OBLIGATIONS OF AN INSOLVENT
11 SELF INSURANCE GROUP ARE A JOINT AND SEVERAL LIABILITY OF EACH MEMBER
12 OF THE SELF INSURANCE GROUP.

13 9-4A-06:

14 (a) The [Commissioner] COMMISSION may not grant the request of a
15 self insurance group to terminate its self insurance agreement unless EACH
16 MEMBER OF the self insurance group has insured or reinsured all incurred workers'
17 compensation obligations with an authorized insurer under an agreement filed with
18 and approved in writing by the [Commissioner] COMMISSION.

19 (b) (1) Subject to the approval of the [Commissioner] COMMISSION, a
20 self insurance group may merge with another self insurance group engaged in the
21 same or similar type of business only if the resulting self insurance group assumes
22 all the obligations of the merging self insurance groups.

23 (2) The [Commissioner] COMMISSION shall hold a hearing on the
24 merger at the request of any party including a member of either self insurance group.

25 (c) For purposes of this section, obligations include known claims and
26 associated expenses and claims incurred but not reported and associated expenses.

27 (D) A WITHDRAWAL BY AN EMPLOYER FROM A SELF INSURANCE GROUP IS
28 NOT EFFECTIVE UNTIL:

29 (1) 30 DAYS AFTER THE DATE THAT THE COMMISSION RECEIVES NOTICE
30 OF THE EMPLOYER'S INTENT TO WITHDRAW FROM THE GROUP; AND

31 (2) THE EMPLOYER HAS SECURED WORKERS' COMPENSATION FOR
32 COVERED EMPLOYEES AS REQUIRED UNDER § 9-402 OF THIS TITLE.

33 9-4A-07:

34 The [Commissioner] COMMISSION may:

35 (1) require actuarial studies and audits to determine the financial
36 solvency of each self insurance group as often as the [Commissioner] COMMISSION
37 desires;

1 (2) ~~assess each self insurance group an annual amount [of not more~~
2 ~~than \$500 to be used for] REQUIRED TO PAY FOR the actuarial studies and audits;~~
3 ~~and~~

4 (3) ~~require an annual report that may include payroll audit reports,~~
5 ~~summary loss reports, [and] quarterly financial statements, AND ANY OTHER~~
6 ~~INFORMATION REQUIRED BY THE COMMISSION.~~

7 ~~9-4A-08.~~

8 (a) (1) ~~After notice and opportunity for a hearing, the [Commissioner]~~
9 ~~COMMISSION may impose a monetary penalty on a person or self insurance group~~
10 ~~that the [Commissioner] COMMISSION finds to be in violation of this subtitle or a~~
11 ~~regulation adopted under this subtitle.~~

12 (2) ~~A monetary penalty imposed under this subsection may not exceed~~
13 ~~\$1,000 for each violation or \$10,000 in the aggregate.~~

14 (3) ~~A person or self insurance group that is assessed a monetary penalty~~
15 ~~under this subsection shall pay the penalty to the [Commissioner] COMMISSION for~~
16 ~~the use of the State.~~

17 (b) (1) ~~After written notice and opportunity for a hearing, the~~
18 ~~[Commissioner] COMMISSION may issue an order that requires a person or~~
19 ~~self insurance group to cease and desist from engaging in an act or practice that the~~
20 ~~[Commissioner] COMMISSION finds to be in violation of this subtitle or a regulation~~
21 ~~adopted under this subtitle.~~

22 (2) ~~If the [Commissioner] COMMISSION finds, after notice and~~
23 ~~opportunity for a hearing, that a person or self insurance group has violated an order~~
24 ~~issued under this subsection, the [Commissioner] COMMISSION may:~~

25 (i) ~~impose a monetary penalty of not more than \$10,000 for each~~
26 ~~violation of the order or \$100,000 in the aggregate; and~~

27 (ii) ~~suspend or revoke the authority of the self insurance group to~~
28 ~~operate.~~

29 (e) ~~Notwithstanding any other provision of this subtitle, after notice and~~
30 ~~opportunity for a hearing, the [Commissioner] COMMISSION may suspend or revoke~~
31 ~~the authority of a self insurance group to operate if the [Commissioner]~~
32 ~~COMMISSION determines that the self insurance group:~~

33 (1) ~~is insolvent OR IS UNABLE TO MEET ITS CURRENT OBLIGATIONS;~~

34 (2) ~~failed to pay the special fund contribution or regulatory fee imposed~~
35 ~~on the self insurance group;~~

1 (3) failed to comply within the time set with a provision of this subtitle,
2 a regulation adopted under this subtitle, or a lawful order of the [Commissioner]
3 COMMISSION;

4 (4) obtained its authority to operate by fraud, including making a
5 material misrepresentation in the application for authority to operate as a
6 self insurance group;

7 (5) misappropriated, converted, illegally withheld, or refused to pay on
8 proper demand moneys that have been entrusted to the self insurance group or its
9 administrator in its fiduciary capacity and that belong to a member of the
10 self insurance group, an employee of a member, or a person entitled to payment; or

11 (6) for any other reason, must have its authority to operate suspended or
12 revoked to protect the members or insureds of a self insurance group or the public.

13 SECTION 2. AND BE IT FURTHER ENACTED, That the Workers'
14 Compensation Benefit and Insurance Oversight Committee shall study and make
15 recommendations regarding the payment of claims of an insolvent self-insurance
16 group under Title 25, Subtitle 3 of the Insurance Article. The Committee shall report
17 its findings and recommendations to the House Economic Matters Committee and
18 Senate Finance Committee on or before December 1, 2001.

19 SECTION 2. 3. AND BE IT FURTHER ENACTED That, on or before December
20 1, 2001, the Maryland Insurance Administration shall report to the Senate Finance
21 Committee and the House Economic Matters Committee, in accordance with § 2-1246
22 of the State Government Article, on:

23 (1) the name of each workers' compensation self-insurance group, the
24 type of businesses that generally become members of each group, the number of
25 employers that belong to each group, and the total number of employees that are
26 served by each group;

27 (2) the status of the regulation and operation of the workers'
28 compensation self-insurance groups; and

29 (3) any recommendations for changes to the law regarding the regulation
30 of workers' compensation self-insurance groups.

31 SECTION 3. 4. AND BE IT FURTHER ENACTED, That this Act shall take
32 effect October 1, 2001.

