

SENATE BILL 763

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2001 Regular Session
1lr2483

By: **Senator Dorman**

Introduced and read first time: February 2, 2001

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

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

3 FOR the purpose of transferring responsibility for the regulation of workers'
4 compensation self-insurance groups from the Insurance Commissioner to the
5 Workers' Compensation Commission; altering requirements relating to
6 minimum levels of contributions, excess insurance coverage, and surety bonds;
7 altering the amount of combined net assets that a self-insurance group must
8 have; altering the assessment that a self-insurance group must pay to the
9 Self-Insurers' Guaranty Fund; adding to the liabilities of the members of a
10 self-insurance group that becomes insolvent; altering the conditions for
11 terminating or withdrawing from a self-insurance group; altering the conditions
12 under which a self-insurance group's authority to operate may be suspended or
13 revoked; defining "insolvent self-insurance group"; and generally relating to
14 group self-insurance for workers' compensation and the regulation and
15 operation of self-insurance groups.

16 BY transferring
17 Article - Insurance
18 Section 25-301 through 25-308 and the subtitle "Subtitle 3. Group
19 Self-Insurance for Workers' Compensation", respectively
20 Annotated Code of Maryland
21 (1997 Volume and 2000 Supplement)

22 to be
23 Article - Labor and Employment
24 Section 9-4A-01 through 9-4A-08 and the subtitle "Subtitle 4A. Group
25 Self-Insurance for Workers' Compensation", respectively
26 Annotated Code of Maryland
27 (1999 Replacement Volume and 2000 Supplement)

28 BY repealing and reenacting, with amendments,
29 Article - Labor and Employment
30 Section 9-4A-01 through 9-4A-08
31 Annotated Code of Maryland

1 (1999 Replacement Volume and 2000 Supplement)
2 (As enacted by Section 1 of this Act)

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

10 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland
11 read as follows:

12 **Article - Labor and Employment**

13 Subtitle 4A. Group Self-Insurance for Workers' Compensation.
14 9-4A-01.

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

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

19 (C) "INSOLVENT SELF-INSURANCE GROUP" MEANS A SELF-INSURANCE
20 GROUP THAT CANNOT MEET ITS CURRENT OBLIGATIONS UNDER THE WORKERS'
21 COMPENSATION LAWS OF THIS STATE.

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

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

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

30 9-4A-02.

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

1 9-4A-03.

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

4 (1) claims adjustment;

5 (2) safety engineering;

6 (3) compilation of statistics and the preparation of premium, loss, and
7 tax reports;

8 (4) preparation of other required self-insurance reports;

9 (5) development of members' assessments and fees; and

10 (6) administration of a claim fund.

11 (b) The [Commissioner] COMMISSION shall adopt regulations to carry out
12 this subtitle.

13 (c) The regulations shall include:

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

17 (2) for each classification:

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

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

26 (iii) a requirement that the minimum levels of excess insurance
27 adopted under this subtitle may be satisfied by placing, in a depository that the
28 [Commissioner] COMMISSION designates, securities in a form and amount that the
29 [Commissioner] COMMISSION requires; and

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

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

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

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

6 9-4A-04.

7 (a) Before a self-insurance group may operate, the self-insurance group must
8 obtain the approval of the [Commissioner] COMMISSION, including approval of its
9 self-insurance agreement.

10 (b) Each self-insurance group must have combined net assets [of at least
11 \$1,000,000] IN AN AMOUNT SET BY THE COMMISSION AT NOT LESS THAN \$1
12 MILLION.

13 9-4A-05.

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

16 (b) There is a Self-Insurers' Guaranty Fund.

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

20 (d) Each self-insurance group shall pay an assessment into the Self-Insurers'
21 Guaranty Fund [at the same level assessed against other workers' compensation
22 insurers by the Property and Casualty Insurance Guaranty Corporation under Title
23 9, Subtitle 3 of this article] IN A MANNER AND AMOUNT SET BY THE COMMISSION TO
24 ENSURE THE SOLVENCY OF THE SELF-INSURERS' GUARANTY FUND.

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

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

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

35 (3) ANY OBLIGATION OF AN INSOLVENT SELF-INSURANCE GROUP PAID
36 BY EITHER THE SELF-INSURERS' GUARANTY FUND OR THE UNINSURED EMPLOYERS'

1 FUND IS A JOINT AND SEVERAL LIABILITY OF EACH MEMBER OF THE
2 SELF-INSURANCE GROUP.

3 (4) ANY LITIGATION COSTS OR FEES OR ANY OTHER COLLECTION COSTS
4 PAID BY EITHER THE SELF-INSURERS' GUARANTY FUND OR THE UNINSURED
5 EMPLOYERS' FUND IN RECOVERING OUTSTANDING OBLIGATIONS OF AN INSOLVENT
6 SELF-INSURANCE GROUP ARE A JOINT AND SEVERAL LIABILITY OF EACH MEMBER
7 OF THE SELF-INSURANCE GROUP.

8 9-4A-06.

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

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

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

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

22 (D) A WITHDRAWAL BY AN EMPLOYER FROM A SELF-INSURANCE GROUP IS
23 NOT EFFECTIVE UNTIL:

24 (1) 30 DAYS AFTER THE DATE THAT THE COMMISSION RECEIVES NOTICE
25 OF THE EMPLOYER'S INTENT TO WITHDRAW FROM THE GROUP; AND

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

28 9-4A-07.

29 The [Commissioner] COMMISSION may:

30 (1) require actuarial studies and audits to determine the financial
31 solvency of each self-insurance group as often as the [Commissioner] COMMISSION
32 desires;

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

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

4 9-4A-08.

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

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

11 (3) A person or self-insurance group that is assessed a monetary penalty
12 under this subsection shall pay the penalty to the [Commissioner] COMMISSION for
13 the use of the State.

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

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

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

24 (ii) suspend or revoke the authority of the self-insurance group to
25 operate.

26 (c) Notwithstanding any other provision of this subtitle, after notice and
27 opportunity for a hearing, the [Commissioner] COMMISSION may suspend or revoke
28 the authority of a self-insurance group to operate if the [Commissioner]
29 COMMISSION determines that the self-insurance group:

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

31 (2) failed to pay the special fund contribution or regulatory fee imposed
32 on the self-insurance group;

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

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

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

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

10 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
11 October 1, 2001.