

# MAINE STATE LEGISLATURE

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# 123rd MAINE LEGISLATURE

## FIRST REGULAR SESSION-2007

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Legislative Document

No. 933

H.P. 708

House of Representatives, March 1, 2007

**An Act To Authorize the Certification of Workplace Safety  
Programs Offered by Workers' Compensation Insurers**

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Reference to the Committee on Labor suggested and ordered printed.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

Presented by Representative WATSON of Bath.  
Cosponsored by Representatives: BRAUTIGAM of Falmouth, FISCHER of Presque Isle,  
MILLS of Farmington, WOODBURY of Yarmouth.

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

2 **Sec. 1. 24-A MRSA §2385-C, sub-§2**, as amended by PL 1997, c. 592, §67, is  
3 further amended to read:

4 **2. Standards for workplace health and safety consultations.** The superintendent,  
5 in consultation with the Department of Labor, ~~may shall~~ adopt, ~~no later than January 1,~~  
6 2008, rules establishing the standards for approval of workplace health and safety  
7 consultations provided to employers by insurance carriers, including provision of  
8 adequate facilities, qualifications of persons providing the consultations, specialized  
9 techniques and professional services to be used and educational services to be offered to  
10 employers. The standards must include all of the services offered to employers by the  
11 Department of Labor under Title 26, section 42-A, subsection 2 to the extent that such  
12 services contribute to the avoidance and prevention of unsafe or unhealthful working  
13 conditions in employment. The rules must include a process by which insurers, at their  
14 request, may be certified by the superintendent as meeting or exceeding the standards.

15 **Sec. 2. 26 MRSA §42-A, sub-§7** is enacted to read:

16 **7. Exception.** Notwithstanding this section, beginning July 1, 2008, the department  
17 may decline service to an employer that is insured by an insurer that is certified by the  
18 superintendent under Title 24-A, section 2385-C, subsection 2 as meeting or exceeding  
19 the standards for approval of workplace health and safety consultations.

20 **Sec. 3. 26 MRSA §61**, as amended by PL 1999, c. 57, Pt. B, §5, is further  
21 amended to read:

22 **§61. Safety Education and Training Fund**

23 **1. Fund established.** To accomplish the objectives outlined in section 42-A, there is  
24 established in the State Treasury a special fund, known as the Safety Education and  
25 Training Fund. The safety fund ~~shall must~~ be administered by the commissioner. The  
26 department ~~shall have~~ has authority over the safety fund and may do all things necessary  
27 or convenient in the administration of the safety fund and shall formulate and adopt rules,  
28 pursuant to the Maine Administrative Procedure Act, Title 5, chapter 375, governing its  
29 administration and maintenance, and perform all other functions ~~which that~~ the laws of  
30 this State specifically authorize or ~~which that~~ are necessary or appropriate. All money  
31 and securities in the safety fund ~~shall must~~ be held in trust by the Treasurer of State for  
32 the purpose of funding the safety education and training program under section 42-A and  
33 ~~shall may~~ not be money or property for the general use of the State. The fund ~~shall may~~  
34 not lapse. The Treasurer of State shall notify the commissioner and the Legislature of  
35 interest credited and the balance of the safety fund as of June 30th of each year.

36 **1-A. Bureau of Insurance report.** On or before July 1st of each year, the Bureau of  
37 Insurance shall provide to the commissioner the amounts of actual losses, excluding  
38 medical payments, paid by each workers' compensation individual self-insurer and  
39 workers' compensation group self-insurer during the previous calendar year. Beginning  
40 with the report due on or before July 1, 2008, the superintendent shall include in the

1 report the names of insurers, if any, that are certified under Title 24-A, section 2385-C,  
2 subsection 2 as meeting or exceeding the standards for approval of workplace health and  
3 safety consultations.

4 **2. Source of funds.** The commissioner or the commissioner's designee shall  
5 annually assess a levy based on actual annual workers' compensation paid losses,  
6 excluding medical payments, paid in the most recent calendar year for which data is  
7 available by employers under former Title 39, the Workers' Compensation Act or Title  
8 39-A, Part 1, the Maine Workers' Compensation Act of 1992. As Except as provided in  
9 subsection 2-A, as soon as practicable after July 1st of each year, the commissioner or the  
10 commissioner's designee shall assess upon and collect from each insurance carrier  
11 licensed to do workers' compensation business in the State, and each group and individual  
12 self-insured employer authorized to make workers' compensation payments directly to  
13 their employees, a sum equal to that proportion of the current fiscal year's appropriation,  
14 exclusive of any federal funds, for the safety education and training program that the total  
15 workers' compensation benefits, exclusive of medical payments, paid by each licensed  
16 carrier or each group or individual self-insured employer, bear to the total of the benefits  
17 paid by all licensed carriers, and group and individual self-insured employers during the  
18 most recent calendar year for which data is available, except that the total amount levied  
19 annually may not exceed 1% of the total of the compensation benefits paid by all licensed  
20 carriers, and group and individual self-insured employers during the most recent calendar  
21 year for which data is available. A licensed carrier or group or individual self-insured  
22 must be assessed based on all benefits paid, exclusive of medical payments, during any  
23 year for which the carrier was licensed or the group or individual self-insured employer  
24 was authorized to make workers' compensation payments directly to their employers for  
25 any portion of the year.

26 **2-A. Exception for certain insurers.** Beginning with the first assessment levied  
27 after July 1, 2008 under subsection 2, the commissioner may not assess an insurer that is  
28 certified as meeting or exceeding the standards for approval of workplace health and  
29 safety consultations under Title 24-A, section 2385-C, subsection 2.

30 **3. Notice of assessments.** The Commissioner of Labor or the commissioner's  
31 designee shall send notice of the assessments by certified mail to each licensed carrier  
32 and each group or individual self-insured employer. Payment of assessments must be  
33 received in an office of the Department of Labor designated by the commissioner before a  
34 date specified in the notice, but not more than 90 days after the date of the mailing. The  
35 department may, through the rules governing this section, assess penalties for late  
36 payment. Such penalties may not exceed 6% per year.

37 **4. Assessments constitute element of loss.** The levy assessment constitutes an  
38 element of loss for the purpose of establishing rates for workers' compensation insurance.  
39 Funds derived from this levy must be deposited in the safety fund and must be  
40 appropriated by the Legislature for the operation of this program.

41 **5. Violations.** Any insurance company, group self-insured association or self-  
42 insured employer subject to this section that willfully fails to pay an assessment in  
43 accordance with this section commits a civil violation for which a forfeiture of not more  
44 than \$500 may be adjudged for each day payment is not made following the due date.

1

## SUMMARY

2        This bill directs the Superintendent of Insurance to adopt rules establishing the  
3 standards for approval of workplace health and safety consultations provided to  
4 employers by insurance carriers. The rules must include a process by which insurers may  
5 be certified by the superintendent as meeting or exceeding those standards. The bill  
6 authorizes the Department of Labor to decline providing safety consulting services to  
7 employers that can obtain comparable services from their insurers and exempts insurers  
8 that are certified as meeting or exceeding the standards for approval of workplace health  
9 and safety consultations from the annual assessment by the Department of Labor to fund  
10 its consultations.