

# MAINE STATE LEGISLATURE

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**LAWS**  
**OF THE**  
**STATE OF MAINE**

**AS PASSED BY THE**  
**ONE HUNDRED AND SEVENTEENTH LEGISLATURE**

**FIRST SPECIAL SESSION**  
**November 28, 1995 to December 1, 1995**

**SECOND REGULAR SESSION**  
**January 3, 1996 to April 4, 1996**

**THE GENERAL EFFECTIVE DATE FOR**  
**FIRST REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**JULY 4, 1996**

**PUBLISHED BY THE REVISOR OF STATUTES**  
**IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,**  
**TITLE 3, SECTION 163-A, SUBSECTION 4.**

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**J.S. McCarthy Company**  
**Augusta, Maine**  
**1995**

education facilities authorized by the State's Diabetes Control Project within the Bureau of Health.

**Sec. 5. Applicability.** This Act applies to all policies and contracts executed, delivered, issued for delivery, continued or renewed on or after the effective date of this Act. All policies and contracts are deemed to be renewed no later than the next yearly anniversary of the contract date.

See title page for effective date.

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**CHAPTER 593**

**S.P. 628 - L.D. 1635**

**An Act to Amend the Law  
Concerning Tobacco Use by  
Juveniles**

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

**Sec. 1. 22 MRSA §1553, sub-§4, ¶A,** as enacted by PL 1995, c. 470, §9 and affected by §19, is amended to read:

A. The sale or transfer of stock of a corporate licensee whose stock is not publicly traded that results in the sale or transfer of more than 10% of the shares of stock of the corporate licensee;

**Sec. 2. 22 MRSA §1553, sub-§4, ¶A-1** is enacted to read:

A-1. The sale or transfer of stock of a corporate licensee whose stock is publicly traded that results in the sale or transfer of more than 51% of the voting shares of the corporate licensee;

**Sec. 3. 22 MRSA §1555, sub-§1, ¶B,** as enacted by PL 1995, c. 470, §9 and affected by §19, is amended to read:

B. It is an affirmative defense to prosecution under this subsection that the defendant sold or distributed cigarettes, cigarette paper or any other tobacco product to a person under 18 years of age who furnished fraudulent proof of age.

**Sec. 4. 22 MRSA §1556-A, sub-§2,** as enacted by PL 1995, c. 470, §9 and affected by §19, is repealed and the following enacted in its place:

**2. Enforcement; jurisdiction.** Enforcement of criminal offenses may be carried out by written summons pursuant to Title 17-A filed in the District Court. Enforcement of civil violations set forth in section 1555, subsection 2 may be carried out by complaint filed in District Court. All other civil

violations under this chapter are within the jurisdiction of the Administrative Court pursuant to section 1557, subsection 1.

**Sec. 5. 22 MRSA §1556-A, sub-§3,** as enacted by PL 1995, c. 470, §9 and affected by §19, is repealed.

**Sec. 6. 22 MRSA §1557, sub-§3** is enacted to read:

**3. Injunction.** If the person licensed to sell tobacco products has engaged in or is about to engage in any act or practice that violates this chapter, the Administrative Court may grant a permanent or temporary injunction, restraining order or other order as appropriate.

See title page for effective date.

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**CHAPTER 594**

**S.P. 688 - L.D. 1757**

**An Act to Clarify and Amend  
Provisions of the Workers'  
Compensation Act Relating to  
Workers' Compensation Self-  
insurance**

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

**Sec. 1. 24-A MRSA §601, sub-§16, ¶A-1** is enacted to read:

A-1. For filing application for authority to self-insure under Title 39-A, section 403, subsection 16, including all documents submitted as part of the application §500.

**Sec. 2. 39-A MRSA §403, sub-§5, ¶A,** as enacted by PL 1991, c. 885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

A. Any group of employers may adopt a plan for self-insurance, as a group, for the payment of compensation under this Act to their employees. ~~No~~ A group may not be approved to operate a self-insurance plan in the form of a corporation, partnership or limited liability company. Under a group self-insurance plan the group shall assume the liability of all the employers within the group and pay all compensation for which the employers are liable under this chapter. When the plan is adopted, the group shall furnish satisfactory proof to the Superintendent of Insurance of its financial ability to pay ~~such~~ the compensation for the employers in the group and its revenues, their source and assurance of

continuance. The superintendent shall require the deposit with the board of such securities as the superintendent determines necessary of the kind prescribed in subsection 9 or the filing of a bond issued by a surety company authorized to transact business in this State, in an amount to be determined to secure its liability to pay the compensation of each employer as above provided in accordance with subsection 9. ~~Such~~ The surety bond must be approved as to form by the superintendent. The superintendent may also require that any agreements, contracts and other pertinent documents relating to the organization of the employers in the group be filed with the superintendent at the time the application for group self-insurance is made. The application must be on a form prescribed by the superintendent. The superintendent has the authority to deny the application of the group to pay ~~such~~ the compensation for failure to satisfy any applicable requirement of this section. The superintendent shall approve or disapprove an application within 90 days. The group qualifying under this paragraph is referred to as a self-insurer.

**Sec. 3. 39-A MRSA §403, sub-§6, ¶B,** as enacted by PL 1991, c. 885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

B. Each individual self-insured employer, except ~~those~~ an employer utilizing an actuarially fully funded trust pursuant to subsection 3, is required to obtain an actuarial evaluation of undischarged claims and claims settlement liabilities at least once every 3 years, unless the requirement is waived by the superintendent. The superintendent may waive the triennial actuarial evaluation if the number of outstanding claims is not of sufficient volume to permit a credible actuarial analysis. This review and evaluation must be performed by a casualty actuary who is a member of the American Academy of Actuaries. Upon approval to self-insure, the Superintendent of Insurance shall indicate the deadline for that self-insurer to complete an actuarial review. In addition to this triennial review, the superintendent may require the reserves and liabilities of a self-insurer to be reviewed and evaluated as often as the superintendent determines necessary.

Any self-insurer that develops an imputed annual standard premium not exceeding \$50,000 and demonstrates that it has provided security for its workers' compensation exposures in an amount that is at least 135% of its case-based claims reserves, as evaluated annually, is excused from providing an actuarial evaluation in any year in which these conditions are satisfied. For the pur-

poses of this subsection, "case-based claims reserves" means undischarged claims that have arisen during the period of self-insurance and of which the employer has had formal notice. This exception may not be construed to limit the superintendent's authority to require an actuarial evaluation when the superintendent determines one is necessary.

**Sec. 4. 39-A MRSA §403, sub-§8, ¶A,** as amended by PL 1995, c. 150, §1, is further amended to read:

A. The bond ~~or~~ security deposit or letter of credit required of an individual self-insurer must be at least an amount determined by the following formula or \$50,000, whichever is larger. The bond ~~or~~ security deposit or letter of credit must be in an amount equal to the loss and loss adjustment expense portion of the annual standard premium for the prospective fiscal coverage period or the outstanding loss reserves minus recoveries from all ~~excess carriers~~ reinsurance and subrogation reduced to net collections plus 25% of annual standard premiums for the prospective fiscal coverage period, whichever is larger. ~~The percentage factor used to determine the portion of annual standard premium allocated for loss and loss adjustment expenses must be acceptable to the Superintendent of Insurance.~~ For the purposes of this paragraph, "annual standard premium" is as defined in section 404, subsection 4.

For individual self-insurers who have a net worth equal to or in excess of \$10,000,000; who have had positive net earnings demonstrated by certified statements of financial condition audited by a certified public accountant for at least 3 of the 5 latest fiscal years, including one of the 2 most recent years; and whose mean annual earnings for the 5 latest fiscal years are at least equal to the normal annual premium for the prospective fiscal coverage period, the minimum security deposit, letter of credit or bond must be an amount determined by the formula in this paragraph or as adjusted for applicable levels of working capital funds.

An employer meeting the standards of this paragraph may deduct from the penal value of its surety bond, from the value of the letter of credit or from the market value of securities deposited an amount not exceeding demonstrated working capital in such current statement of financial condition; ~~the~~. The bond, letter of credit or deposit must be at least \$100,000. An employer organized as a sole proprietorship, partnership or limited liability company is not eligible to deduct its amount of demonstrated working capital from the value of the posted security. A limited liabil-

ity company may be eligible to deduct its amount of demonstrated working capital from the value of the posted security pursuant to rules adopted by the superintendent.

Self-insurers that are unable to meet the preceding standards shall deposit acceptable funds, a letter of credit or a surety bond in that amount produced by the formula described in this paragraph ~~written by a corporate surety that meets the qualifications prescribed by rules adopted by the superintendent.~~ The minimum security deposit, letter of credit or bond amount may be adjusted for applicable levels of working capital funds if the self-insurer was eligible to make an alternative election, under Statement of Financial Accounting Standard No. 106, Employers' Accounting for Postretirement Benefits Other Than Pensions, that would have otherwise caused the self-insurer to have both positive net earnings for at least 3 of the 5 latest fiscal years, including one of the 2 most recent years, and mean annual earnings for the 5 latest fiscal years equal to the normal annual premium for the prospective fiscal coverage period.

Within 30 days after notice by the superintendent, the self-insurer shall post the deposit indicated. This deadline may be extended by the superintendent for good cause, but ~~in no event~~ may not exceed one year from the deadline for compliance as stated in the notice given to the self-insurer.

A bond ~~or~~ security deposit or letter of credit in excess of the amount prescribed by this subsection may be required if the superintendent determines that the self-insurer has experienced a deterioration in financial condition that adversely affects the self-insurer's ability to pay expected losses.

~~No~~ A judgment creditor other than claimants for benefits under this Act ~~has~~ does not have a right to levy upon the self-insurer's assets held in deposit pursuant to this paragraph.

**Sec. 5. 39-A MRSA §403, sub-§12,** as enacted by PL 1991, c. 885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

**12. Qualifications for claims personnel.** Persons who investigate, settle or negotiate the settlement of claims on behalf of self-insurers or employees of self-insurers are required to be licensed as insurance adjusters pursuant to Title 24-A, chapter 17, subchapters I and ~~IV~~ V.

**Sec. 6. 39-A MRSA §403, sub-§14,** as enacted by PL 1991, c. 885, Pt. A, §8 and affected by

§§9 to 11, is repealed and the following enacted in its place:

**14. Reportable events; termination of self-insurance authority; application for continuing self-insurance authority and nonrenewal or revocation order.** A self-insurer must report the occurrence of events as required by this subsection. An employer may elect to voluntarily terminate its authority to self-insure at any time or may make application for continuing authority to self-insure subject to the requirements of this subsection and any rules adopted by the Superintendent of Insurance. The superintendent may make a determination that an employer's authority to self-insure has terminated in accordance with this subsection and any rules adopted by the superintendent or may grant approval of an application for continuing self-insurance authority. For the purposes of this subsection, "employer" includes a successor employer assuming all workers' compensation liabilities of an approved self-insured employer as a result of the occurrence of one of the events in paragraph A.

A. In order for the superintendent to make a determination as to whether the occurrence of an event results in a termination of an individual employer's self-insured plan or results in a need for modification of the terms and conditions of the plan, an approved self-insurer must report any of the following events to the superintendent at least 45 days in advance of the event's occurrence, if known, or no later than 10 days after the event's occurrence, if not known in advance:

- (1) The sale of 20% or more of the common stock or net assets of the self-insurer;
- (2) A division of the business;
- (3) A spin-off of the business;
- (4) A leveraged buyout of the business;
- (5) A reorganization of the business;
- (6) A change in business form;
- (7) An acquisition by or merger of the business with another entity;
- (8) A change in a partnership agreement;
- (9) A change in the membership or managers of a limited liability company;
- (10) Dissolution of a partnership or a limited liability company;
- (11) Cessation of business in the State; or

(12) Any other event affecting the ownership of the business or the structure of the business as identified in rules adopted by the superintendent.

Notwithstanding any other provision of this paragraph, an employer that elects to apply to continue to self-insure under paragraph C must notify the superintendent 45 days in advance of the event's occurrence and must file an application for continuing authority to self-insure with the superintendent 30 days in advance of the event's occurrence. At the discretion of the superintendent and if good cause is shown, an employer may submit an application to continue to self-insure less than 30 days in advance of the event's occurrence.

B. If a self-insured employer elects to terminate its self-insurance program, or a portion of its program, it must submit written notice and a written termination plan to the superintendent at least 30 days in advance of the proposed termination date. In the event that a self-insurer elects to terminate its approval in this State without filing a plan acceptable to the superintendent, the superintendent shall issue an order prescribing the terms and conditions of the termination. The termination plan must specify, but is not limited to, procedures for claims handling, reservation of assets or other security acceptable to the superintendent to be maintained in the State to discharge claims liabilities and other obligations under this Act and a description of how ultimate reserves were determined. The termination plan must contain a written agreement that the self-insurer continues to be subject to informational filings respecting changes in ownership, financial condition, and actuarial evaluation of claims, claims expense reserves and loss transfers when determined necessary by the superintendent to ensure that claims are adequately secured. The plan must also comply with the terms and conditions prescribed by rule by the superintendent. To protect the interests of claimants, the superintendent may require a further deposit to be held in trust by the Treasurer of State or may require full funding of workers' compensation liabilities.

C. If the self-insured employer and any successor employer elect to continue to self-insure after the occurrence of an event in paragraph A, the employer and any successor employer must file notice of intent to continue to self-insure with an application for continuing authority to self-insure. In order to qualify to file for continuing self-insurance authority, any successor employer must assume 100% of the liabilities of the prede-

cessor self-insured employer and must show that the business in the State remains substantially the same.

(1) The notice of intent and application to continue to self-insure must be received by the superintendent 30 days prior to the event's occurrence. The application must be made on a form approved by the superintendent and include the application fee required in Title 24-A, section 601. Within 7 days of receipt by the superintendent of the application to continue to self-insure, the employer and any successor employer must provide all information requested by the superintendent to allow the superintendent to make a determination under this section.

(2) While the application is pending, the superintendent may request any other information from the applicant determined by the superintendent to be necessary for review of the application. The applicant must promptly provide any additional information upon request in the most expeditious manner.

(3) While the application is pending and during the 30-day period following a denial of an application for continuing self-insurance authority, the employer and any successor employer must maintain the security and reinsurance as required by the employer's certificate of authority, must continue to comply with all other provisions of the employer's certificate of authority and must provide any additional security determined by the superintendent to be necessary under the circumstances. During the application period, the self-insurance authority of the employer continues, consistent with the terms and conditions of the employer's certificate of authority.

(4) Failure to provide the information when requested or failure to comply with the terms and conditions of the employer's certificate of authority or with any additional conditions prescribed by the superintendent will result in automatic termination of the employer's authority to self-insure and the issuance of an order by the superintendent that prescribes the terms and conditions of a termination plan.

D. The superintendent shall notify the employer in writing within 30 days of receipt of all requested information whether the employer's ap-

plication for continuing self-insurance authority is approved or denied. The superintendent's notice must specify the reasons for the denial or must specify the terms and conditions for continuing self-insurance authority as prescribed by this section and any rules adopted by the superintendent.

(1) In making a determination, the superintendent must consider, among other things, whether the successor employer has assumed 100% of the workers' compensation liabilities of the employer, whether the successor employer qualifies for self-insurance authority pursuant to subsection 3 and whether the successor employer maintains substantially the same business operations as the predecessor self-insured employer. The superintendent may also consider, among other things, whether the successor employer employs a substantially greater number of employees than did the predecessor employer. For purposes of this subparagraph, the successor employer has assumed 100% of the workers' compensation liabilities of the employer if the successor employer is unconditionally liable for payment of all benefits that are the obligations of the self-insured employer, regardless of date of injury and notwithstanding agreements for reimbursement from reinsurers or other entities agreeing to reimburse the successor employer for payments associated with self-insurance obligations.

(2) If the superintendent denies the application, the effective date of the termination is 30 days from the date of the superintendent's notice. The self-insurer may request a hearing on this decision within 30 days from the date of the notice. Upon a request for hearing, there is no automatic stay of the superintendent's decision, but the effective date of termination may be stayed by order of the superintendent. Prior to the effective date of the termination, the employer must file a termination plan consistent with paragraph B. After denial of an application, a successor employer may apply for authority to self-insure its workers' compensation obligations pursuant to this section.

E. If at any time the superintendent determines that a self-insurer has failed to notify the superintendent of the occurrence of any of the events identified in paragraph A, the self-insurer may be subject to penalties pursuant to Title 24-A, section 12-A, if it is determined that the occurrence of the event had a substantial impact on the fi-

ancial condition of the self-insured employer. As soon as the superintendent notifies the self-insurer that the superintendent has determined that the self-insurer failed to notify the superintendent of the occurrence of any of these events, the self-insurer must comply with this subsection.

F. If a self-insurer's approval is revoked or not renewed pursuant to subsection 6 or 13, the superintendent must issue an order that prescribes terms and conditions related to the termination of the plan. The terms of the order must conform to, but need not be limited to, the requirements of paragraph B.

G. Any order issued pursuant to this subsection, including an order directing a self-insurer to produce relevant information, may be enforced as provided by Title 24-A, section 214.

H. A self-insurer approved by the superintendent to continue self-insurance authority under paragraph D is not subject to assessments as a new member of the Maine Self-Insurance Guarantee Association. The self-insurer is subject to applicable annual assessments or postinsolvency assessments levied by the Maine Self-Insurance Guarantee Association.

(1) This paragraph applies to all employers authorized by the superintendent to self-insure on or after September 18, 1981. Prior to October 31, 1996, an employer that would have qualified as a successor employer under this subsection may apply for a refund or partial refund of money paid as a new member assessment to the Maine Self-Insurance Guarantee Association on a form approved by the Maine Self-Insurance Guarantee Association. To qualify for a refund, the successor self-insurer must show that it would have qualified for continuing self-insurance authority under this subsection and that it assumed 100% of the workers' compensation liabilities of the former self-insurer. The Maine Self-Insurance Guarantee Association shall review the application and submit a recommendation to the superintendent. The superintendent shall approve or disapprove the application for a refund within 30 days. If the refund is approved, assessment money paid by the successor employer to the Maine Self-Insurance Guarantee Association must be refunded without interest. If such a refund would cause the fund to be reduced below \$2,000,000, the Maine Self-Insurance Guarantee Association shall establish an

equitable schedule for the payment of the refund. This subparagraph is repealed October 31, 1996, and no further applications for refunds may be accepted.

I. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

**Sec. 7. 39-A MRSA §404, sub-§2, ¶¶D and E** are enacted to read:

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.

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.

**Sec. 8. 39-A MRSA §404, sub-§4, ¶A**, as amended by PL 1995, c. 398, §5, is further amended by amending subparagraph (3) to read:

(3) Shall administer a fund, to be known as the Maine Self-Insurance Guarantee Fund, which must receive the assessments required in subparagraph (2). Prior to December 1, 1992, this fund may not exceed \$1,000,000, except that once the fund reaches \$1,000,000, the fund may not exceed \$1,000,000 plus all subsequent initial assessments of new member self-insurers that are required to be made in subpara-

graph (2), division (f). After November 30, 1992, this 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 post-assessment 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;

See title page for effective date.

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## CHAPTER 595

H.P. 1252 - L.D. 1714

### An Act to Establish a Sea Urchin Management Plan