# 114th MAINE LEGISLATURE

## SECOND REGULAR SESSION - 1990

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H.P. 1565 House of Representatives, January 9, 1990

Reported by Representative RAND from the Joint Standing Committee on Banking and Insurance.

Reference to the Joint Standing Committee on Banking and Insurance suggested and printing ordered under Joint Rule 19.

Ed Pert

EDWIN H. PERT, Clerk

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY

**An Act to Amend the Workers' Compensation Insurance Laws.**

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

**Sec. 1. 24-A MRSA §2366, sub-§4, ¶B,** as enacted by PL 1987, c. 559, Pt. A, §4, is repealed and the following enacted in its place:

B. The plan provides for premium surcharges for employers in the Accident Prevention Account based on their specific loss experience within a specified period or other factors which are reasonably related to their risk of loss.

(1) No premium surcharge may be applied to a risk whose threshold loss ratio is less than 1.00. The threshold loss ratio is based on the ratio of "L" to "P" where:

(a) "L" is the actual incurred losses of a risk during the previous 3-year experience period as reported, except that the largest single loss during the 3-year period is limited to the amount of premium charged for the year in which the loss occurred; and

(b) "P" is the premium charged to a risk during that 3-year period.

(2) Premium surcharges apply to a premium that is experience or merit rating modified.

(3) Premium surcharges are based on an insured's adverse deviation from expected incurred losses in this State. The surcharge is based on the ratio of "A" to "B" where:

(a) "A" is the actual incurred losses of a risk during the previous 3-year experience period as reported; and

(b) "B" is the expected incurred losses of a risk during that period as calculated under the uniform experience or merit rating plan multiplied by the risk's current experience or merit rating modification factor.

(4) The premium surcharge is as follows:

| Ratio of "A" to "B" | Surcharge |
|---|---|
| Less than 1.20 | None |
| 1.20 or greater, but less than 1.30 | 5% |
| 1.30 or greater, but | |

| | |
|---|---|
| less than 1.40 | 10% |
| 1.40 or greater, but less than 1.50 | 15% |
| 1.50 or greater | 20% |

**Sec. 2. 24-A MRSA §2366, sub-§6,** as enacted by PL 1987, c. 559, Pt. A, §4, is amended to read:

**6. Mandatory deductible.** A deductible ~~shall apply~~ applies to all workers' compensation insurance policies issued to employers in the Accident Prevention Account ~~which~~ that meet the following qualifications:

A. A net annual premium of ~~$12,000~~ $20,000 or more subject to adjustment pursuant to this section in this State; ~~and~~

B. A premium not subject to retrospective rating; and

C. The employer's threshold loss ratio, as determined under subsection 4, paragraph B, subparagraph (1), is 1.00 or greater.

The deductible ~~shall be~~ is $1,000 a claim but ~~shall apply~~ applies only to wage loss benefits paid on injuries occurring during the policy year. In no event may the sum of all deductibles in one policy year exceed the lesser of 15% of net annual premium or $25,000. Each loss to which a deductible applies ~~shall~~ must be paid in full by the insurer. After the policy year has expired, the ~~insurer~~ employer shall ~~be reimbursed by~~ reimburse the insurer the amount of the deductibles ~~by the employer.~~ This reimbursement ~~shall~~ must be considered as premium for purposes of cancellation or nonrenewal.

For purposes of calculations required under this section, losses ~~shall~~ must be evaluated 60 days from the close of the policy year.

~~The superintendent shall report to the joint standing committee of the Legislature having jurisdiction over insurance by January 30, 1989, regarding the appropriateness of the initial premium level set in paragraph A.~~

~~After any adjustment of the premium level in 1989 in response to the superintendent's report, the superintendent may adjust the premium level through rulemaking if inflationary factors or rate increases warrant any changes.~~

Beginning July 1, 1991, the superintendent shall, by rule, annually adjust the $20,000 premium level established in this subsection to reflect any change in rates for the Accident Prevention Account and any change in wage levels in the preceding calendar year. Changes in wage levels are determined by reference to changes in the state average weekly wage, as computed by the Department of Labor, Bureau of Employment Security. Any adjustment is rounded off to the nearest $1,000 increment.

This subsection ~~shall take~~ takes effect on the effective date of the first approved rate filing after the effective date of this Act.

**Sec. 3. 24-A MRSA §2367, sub-§§1 to 3,** as enacted by PL 1987, c. 559, Pt. A, §4, are amended to read:

**1. Premium surplus.** If the superintendent determines that premiums collected from the insureds in the residual market and investment income allocable to those premiums are greater than the incurred losses and expenses attributable to the risks in that market, the superintendent shall order an appropriate credit applied to the premiums paid by policyholders in the residual market and employers who were policyholders during the policy year for which the surplus was determined but who have since become self-insured.

**2. Premium deficit.** Payment of any premium deficit ~~shall be~~ is determined in the following manner.

A. If the superintendent determines that premiums and investment income attributable to those premiums are less than incurred losses and expenses in the residual market, the superintendent shall then determine the rate of return for the insurance industry in the entire Maine workers' compensation market. If the rate of return is found, considering all relevant factors, to be less than reasonable, the superintendent shall order a surcharge on premiums paid by insureds in both the voluntary and involuntary markets and employers who were in either market during the policy year for which the deficit was determined but who have since become self-insured.

B. Any deficit determined by the superintendent pursuant to paragraph A ~~shall~~ is not ~~be~~ the responsibility of the insurers on an individual or collective basis but ~~shall rather--be~~ is the financial obligation of all insured employers in the State, including employers who were insured during the policy year for which the deficit has been determined but who have since become self-insured. The surcharge ~~shall~~ must be an amount at least to offset the adverse cash flows resultant from the deficiency, provided that the application of ~~such~~ the surcharge does not produce a rate of return in excess of a just and reasonable profit in the entire Maine workers' compensation market.

C. Beginning in 1991, the superintendent, after hearing and only if the rates in the entire workers' compensation market are inadequate to produce a reasonable rate of return, shall determine as of March 15th of each year whether insurers have in good faith made their best efforts to maximize the number of risks in the voluntary market. If the superintendent's determination is affirmative, the surcharge in paragraph A ~~shall-be-applied~~ applies.

If the determination is negative, then the superintendent shall determine the percentage of workers' compensation insurance, by premium volume, that has been written voluntarily statewide. If the premium volume in the voluntary market is greater than or equal to the amount specified in the table below, then the surcharge in paragraph A ~~shall-be-applied~~ applies.

| Policy Year | Premium Volume |
|---|---|
| 1989 | 50% |
| 1990 | 60% |
| 1991 and later | 70% |

~~If-the--superintendent-determines--that--the-percentage--of-premium in-the-voluntary-market-is-less-than-the-percentage-in-the-table above,--the-deficit--collectible--from--insured-employers--shall--be reduced-as--follows:--For-each-reduction-of-5%,-or--part-thereof, below-the-required-percentage,-the-total-deficit--amount--shall-be reduced--by--10%--subject--to--a--maximum--reduction--of--50%--of--the deficit.~~

If the superintendent determines that the percentage of premium in the voluntary market is less than the percentage in the table above, the deficit collectible from insured employers is reduced as follows: for each reduction of 5%, or part thereof, below the required percentage, the total deficit amount is reduced by 10% subject to a maximum reduction of 50% of the deficit.

3. **Application of credit or surcharge.** Credits or surcharges ordered by the superintendent ~~shall~~ apply to policies issued or renewed during the calendar year after the order of the superintendent is issued or for such other period as the superintendent may order. In the case of an employer who was insured during the policy year for which the surplus or deficit has been determined but who is now self-insured, individually or as part of a group, the superintendent shall determine that employer's premium equivalent against which the credit or surcharge applies. In the case of a credit, the superintendent shall also determine the method of payment of that employer's credit.

**Sec. 4. 24-A MRSA §2367, sub-§6,** as enacted by PL 1987, c. 559, Pt. A, §4, is repealed.

**Sec. 5. 39 MRSA §23, sub-§1, ¶A** is enacted to read:

A. If an insurer offers or purports to renew a contract for workers' compensation insurance on less favorable terms to the insured or at higher rates or a higher rating plan, the insurer must notify the contract holder of the new terms or rates at least 30 days before those terms or rates are to take effect. The contract holder may elect to cancel the renewal policy within 30 days after receiving this notice. Earned premium for the period of coverage for any time that the renewal contract was in force is calculated pro rata at the current or previous year's rate, whichever is lower. If the insured accepts the renewal, the premium increase, if any, and other changes take effect no earlier than the 31st day after notice is delivered to the contract holder.

**Sec. 6. Application.** Sections 1, 2 and 5 of this Act apply only to workers' compensation insurance policies issued or renewed on or after the effective date of this Act. Section 3 of this Act applies retroactively to November 20, 1987.

## STATEMENT OF FACT

This bill is part of the legislation submitted as a result of a study on the feasibility of creating a state workers' compensation insurance fund, conducted by a subcommittee of the Joint Standing Committee on Banking and Insurance. The following changes are made to present law.

1. The bill amends the eligibility criteria for application of the premium surcharge penalty to employers in the workers' compensation Accident Prevention Account. The bill adds an additional requirement that an employer have a threshold loss ratio of 1.00 or greater before the premium surcharge penalty may apply. The threshold loss ratio is calculated by dividing an employer's actual incurred losses over the 3-year reporting period by the premium charged to that employer during the same period, except that if any single claim in the 3-year reporting period exceeds the premium paid by that employer in the year that the loss occurred, that loss will be limited to the employer's premium amount for the year in which the claim was initiated. This formula limits the effect of a single large claim on an employer's loss experience preventing employers whose high loss ratio is due primarily to a single expensive claim from falling subject to the premium surcharge penalty.

2. The bill amends the criteria for application of mandatory deductibles to employers in the Accident Prevention Account. The bill increases the premium threshold for application of mandatory deductibles from $12,000 to $20,000 and provides for the annual adjustment of this level, by rule of the Superintendent of Insurance, to account for changes in rates and payroll. Changes in payroll levels are determined with reference to any change in the state average weekly wage. Further, the bill establishes a threshold loss ratio of over 1.00 as a prerequisite to application of the mandatory deductible.

3. The bill clarifies those provisions of current law that describe those employers who are subject to the potential premium surcharges or credits authorized by the so-called "Fresh Start" provisions. A question has arisen concerning which employers will be subject to a premium surcharge, if any is ordered by the superintendent. The primary question is whether employers who were part of the commercial insurance market in the policy year on which the surcharge is based, but who have since become approved for self-insurance or have joined an approved group self-insurance plan, will be subject to any surcharge. The current statutory language is not clear as to whether these employers are obligated to pay the surcharge. The bill clarifies that those employers who were part of the insurance market in the policy year for which a deficit or surplus has been determined but who have since become self-insured, either as individuals or as part of any group self-insurance plan, shall pay or receive their proportionate part of the current year surcharge or credit, respectively.

4. The bill repeals obsolete statutory language.

5. The bill requires a workers' compensation insurance carrier to provide an employer with at least 30 days' notice of any impending increase in premium. If this notice is not provided at least 30 days before the policy renewal date, the employer has 30 days after receiving the notice in which to elect to cancel the renewed policy.