R. of S.

L.D. 2378

(Filing No. S- 638)

STATE OF MAINE
SENATE
114TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT " A" to S.P. 940, L.D. 2378, Bill, "An Act to Amend the Fresh Start Provision of the Workers' Compensation Insurance Laws"

Amend the bill by striking out everything after the title and before the statement of fact and inserting in its place the following:

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

Sec. 1. 24-A MRSA §2366, sub-§10 is enacted to read:

<u>**10. Rules.** The superintendent shall adopt rules to provide for an equitable distribution among insurers of any deficit or surplus in the residual market not subject to section 2367. The rules must give due consideration to efforts by individual insurers to underwrite risks in the voluntary market.</u>

Sec. 2. 24-A MRSA §2367, sub-§2, ¶B, as enacted by PL 1987, c. 559, Pt. A, §4, is amended to read:

B. Any deficit determined by the superintendent pursuant to paragraph A ~~shall~~ <u>is</u> not ~~be~~ the responsibility of the insurers on an individual or collective basis but ~~shall rather be~~ <u>is</u> the financial obligation of all insured employers in the State. The surcharge ~~shall~~ <u>must</u> be an amount at least to offset the adverse cash flows resultant from the deficiency, provided that the application of such surcharge does not produce a rate of return in excess of a just and reasonable profit in the entire Maine workers' compensation market. <u>In any event, the amount of the surcharge in any year must be at least equal to the investment income that would be earned in the 12 months following the surcharge on any portion of the deficit that is not recovered by surcharge in that year, except that the superintendent is not required to order this minimum amount in the first policy year in which a deficit is determined with respect to a policy year.</u>

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Sec. 3. 24-A MRSA §2367, sub-§§8 and 9 are enacted to read:

8. Limit on deficits or surpluses. Notwithstanding any provision of this section, neither a surcharge or credit may be applied with respect to deficits or surpluses arising from policies issued to employers on or after January 1st of the policy year following a determination by the superintendent that:

A. No deficit exists in the residual market regarding one or more policy years under review; or

B. The rate of return in the entire Maine workers' compensation market, as determined for the purposes of this section, is just and reasonable consistent with subsection 2, paragraphs A and B.

9. Final determination of deficit or surplus; timetable for surcharge or credit. In making the annual determination required by this section, the superintendent shall make a final determination of the deficit or surplus for any policy year with respect to which the superintendent has received 7 complete annual evaluations of residual market policy year experience. Regardless of receipt of 7 complete evaluations, the superintendent shall make a final determination regarding a policy year no later than the 8th calendar year following the close of the policy year under review. If the superintendent determines that there is a surplus for that policy year, the superintendent shall order a credit under subsection 1. If the superintendent determines that there is a deficit for that policy year, the superintendent shall establish a schedule of surcharges to recover the remainder of the deficit for that policy year over a period not to exceed 10 years, except that in each year application of the surcharge is subject to subsection 2.

FISCAL NOTE

The Bureau of Insurance within the Department of Professional and Financial Regulation will incur some additional rule-making costs which can be absorbed within existing budgeted resources.'

STATEMENT OF FACT

This amendment revises the Maine Revised Statutes, Title 24-A, section 2367, subsection 2, paragraph B, that sets forth the required minimum annual surcharge, to clarify that the minimum annual surcharge is the greater of the cash flow needs of the residual market and lost investment income. The amendment provides that the minimum surcharge to cover lost investment

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income is not required in the first policy year in which a deficit is determined for a policy year under review.

The amendment establishes the circumstances under which the "fresh start" process will terminate and Maine employers will no longer be responsible for residual market deficits or obtain rights to residual market surpluses. If the Superintendent of Insurance determines in any annual "fresh start" determination that there is at least one prior policy year for which there is no deficit in the residual market, or that the rate of return in the entire Maine workers' compensation market is just and reasonable, the "fresh start" process will terminate with respect to policies issued on or after January 1st following that determination. Termination of the "fresh start" process means that deficits or surpluses created in the residual market with respect to those policies will not be subject to the "fresh start" determination process. The policies will continue to be subject to surcharges or credits, however, with respect to past policy year deficits or surpluses, to the extent provided by law.

The amendment authorizes the Superintendent of Insurance to adopt rules to allocate residual market surpluses and deficits not subject to the "fresh start" process among workers' compensation insurers. Due consideration must be given to insurers who made efforts to write workers' compensation insurance in Maine on a voluntary basis pursuant to the "fresh start" process.

The amendment revises Title 24-A, section 2367, subsection 9, that provides for a final determination of the deficit for any policy year and that a final determination of deficit or surplus will be made for each policy year after the losses from that policy year have been developed for 7 full years. This prevents the need to recalculate the losses every year, but also permits sufficient development time so that the final calculation will be accurate. The amendment also provides more flexibility for the superintendent by allowing that the surcharge be spread over a period not to exceed 10 years, instead of requiring that it be spread over exactly 10 years.

Finally, the amendment deletes the emergency clause, emergency preamble and the application section.

Reported by Senator Bustin for the Committee on Banking and Insurance. Reproduced and Distributed Pursuant to Senate Rule 12.
(4/2/90) (Filing Number S-638)