114th MAINE LEGISLATURE

SECOND REGULAR SESSION - 1990

Legislative Document **No. 2378**

S.P. 940 In Senate, March 1, 1990

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27.

Reference to the Committee on Banking and Insurance suggested and ordered printed.

Joy J. O'Brien

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator THERIAULT of Aroostook.

Cosponsored by Representative RYDELL of Brunswick, Representative KETOVER of Portland and Representative JOSEPH of Waterville.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY

An Act to Amend the Fresh Start Provision of the Workers' Compensation Insurance Laws.

(EMERGENCY)
(AFTER DEADLINE)

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, this legislation terminates the "fresh start" provision of the workers' compensation laws regarding policies issued on or after July 1, 1990; and

Whereas, it is necessary to give proper notice to employers and insurers of the date of termination of the "fresh start" provision; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 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~~ 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. 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 surcharge does not produce a rate of return in excess of a just and reasonable profit in the entire Maine workers' compensation market. 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.

Sec. 2. 24-A MRSA §2367, sub-§§7 and 8 are enacted to read:

7. Limit on deficits or surpluses. Notwithstanding any provision of this section, there will be no surcharge or credit with respect to losses or surpluses arising from policies issued to employees on or after July 1, 1990, nor will the superintendent calculate the deficit or surplus for those policies.

8. Final determination of deficit or surplus; timetable for surcharge or credit. In 1997, the superintendent shall make a final determination of the deficit or surplus for policies issued prior to July 1, 1990. If the superintendent determines that there is a surplus for those years, the superintendent shall order a credit pursuant to subsection 1. If the superintendent determines that there is a deficit for those years, the superintendent shall establish a schedule of surcharges to recover the remainder of the deficit over a period of 10 years, except that, in each year, application of the surcharge is subject to subsection 2.

Sec. 3. Application. Section 1 of this Act applies to surcharges ordered after January 1, 1991, regarding deficits for all years under consideration at that time.

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect when approved.

STATEMENT OF FACT

This bill repeals the "fresh start" process with respect to workers' compensation insurance policies issued after July 1, 1990.

Under current law, the "fresh start" provision of the 1987 workers' compensation insurance reform laws requires employers to cover losses suffered by insurance companies on workers' compensation insurance policies written after January 1, 1988, and requires insurers to repay any excess premiums collected for those policies. The law requires the Superintendent of Insurance to calculate each year whether losses and expenses on those policies exceed premiums and investment income on those premiums, creating a deficit, or whether premium and income exceed losses and expenses, creating a surplus. If the superintendent determines that there is a surplus, the superintendent is required to order a premium credit to employers in the residual market. If there is a deficit, the superintendent must order a surcharge on all insured employers to fund the deficit. The superintendent has discretion in determining the amount of the surcharge each year, so the deficit resulting for policies in any one year may be funded by surcharges over a number of years.

To prevent constitutional objections to the repeal of "fresh start," the bill permits surcharges and credits to continue for deficits or surpluses created with respect to policies issued before July 1, 1990. Policies issued after July 1, 1990 will continue to be subject to those surcharges or credits.

Under the bill, the superintendent would make a final determination in 1997 as to the amount of the deficit or surplus with respect to pre-July 1, 1990 policies. The superintendent would then establish a 10-year schedule for surcharges to be imposed to reimburse insurers for losses, to the extent permitted by the law. If there is a surplus, the superintendent would order a credit as permitted under existing law.

The bill also requires the superintendent to order a surcharge to recover at least part of any calculated deficit each year until 1997, in an amount at least sufficient to cover the investment income that would be earned by insurers on any part of the deficit not recovered by surcharge that year. The purpose of this requirement is to prevent the deficit from growing unreasonably as a result of delay in fully funding the deficit. The longer the deficit remains unfunded, the larger it grows because insurers are not credited with having received investment income on collections that are held in reserve to pay future costs of already-reported claims. Requiring a surcharge to cover at least lost investment income should prevent the deficit from growing from year to year, except to the extent that loss estimates are revised upwards.