

MAINE STATE LEGISLATURE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
115TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1648, L.D. 2310, Bill, "An Act to Abolish the Second Injury Fund and the Employment Rehabilitation Fund"

Amend the bill by striking out the title and substituting the following:

'An Act to Abolish the Second Injury Fund and Repeal the Employment Rehabilitation Fund Assessment'

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

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

Whereas, there will be savings to Maine employers from these changes to the workers' compensation laws; and

Whereas, unless immediate action is taken, an assessment will be levied against insurers on June 30, 1992; 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:

COMMITTEE AMENDMENT

2 **Sec. 1. 39 MRSA §57-B, sub-§13**, as amended by PL 1991, c. 615,
Pt. A, §31, is further amended to read:

4 **13. Applicability.** Reimbursement under this section is
6 available solely with respect to employees who are injured and
rehabilitated after the effective date of this section. ~~If~~
8 ~~reimbursement--is--available--from--the--Employment--Rehabilitation~~
~~Fund--under--this--section--reimbursement--may--not--be--available--under~~
~~section-57-D.~~

10 **Sec. 2. 39 MRSA §57-B, sub-§§14 and 15** are enacted to read:

12 **14. Contributions to Employment Rehabilitation Fund.** In
14 every case of the death of an employee when there is no person
entitled to compensation, the employer shall pay to the Treasurer
16 of State a sum equal to 100 times the average weekly wage in the
State as computed by the Employment Security Commission for
18 benefit of the Employment Rehabilitation Fund.

20 **15. Transitional eligibility.** Employers and insurance
22 carriers that are receiving reimbursement from the Second Injury
Fund under former section 57 or from the Employment
24 Rehabilitation Fund under former section 57-D continue to receive
reimbursement. The Employment Rehabilitation Fund is not liable
26 for any claim for which the former Second Injury Fund is not
making payment as of the effective date of this subsection.

28 **Sec. 3. 39 MRSA §57-C**, as amended by PL 1991, c. 615, Pt. A,
§32, is further amended to read:

30 **§57-C. Records and reports; inspections**

32 **1. Rate of assessment.** ~~There is levied and imposed an~~
34 ~~assessment on each insurer at the rate of 1/2% in 1986, and 1%~~
~~thereafter, of its actual paid losses during the previous~~
36 ~~calendar quarter.~~

38 **2. Due date.** ~~The assessment imposed by this section is due~~
40 ~~on or before the last day of the 2nd month after the close of the~~
~~calendar quarter.~~

42 **3. Assessment waived.** ~~If, at the end of a calendar~~
44 ~~quarter, the amount of deposit in the Employment Rehabilitation~~
~~Fund, in that portion attributable to this section, is equal to~~
46 ~~or exceeds the amount derived from the last assessment, the~~
~~assessment for that quarter must be waived and not levied or~~
48 ~~imposed.~~

50 **A.** ~~The Treasurer of State shall notify the State Tax~~
Assessor on the day after the end of the calendar quarter,
if the fund equals or exceeds that amount.

2 ~~B.---If so notified,--the State Tax Assessor shall immediately~~
4 ~~notify each insurer that the assessment is waived for that~~
~~quarter.~~

6 4. **Records and reports.** Every insurer shall keep as part
8 of his the insurer's permanent records a record of the amount of
10 each loss paid and its date and the records shall must be open
12 for inspection at all times. Every insurer shall, on or before
14 the 60th day following the end of a calendar quarter, render a
16 report to the State Tax Assessor stating the amount of losses
paid by him the insurer during the preceding calendar quarter.
That report shall must contain any further information the State
Tax Assessor shall prescribe by rule. ~~With that report,--each~~
~~insurer shall forward payment of the assessment amount due.~~

18 ~~5.---Appropriation of money received.---The State Tax Assessor~~
~~shall pay all receipts from that assessment to the Treasurer of~~
20 ~~State daily.---The Treasurer of State shall deposit all receipts~~
~~as received in the Employment Rehabilitation Fund.~~

22 6. **Inspections.** The State Tax Assessor or his a duly
24 authorized agent, for the purpose of determining the truth or
falsity of any statement or return made by the insurer, may:

26 A. Enter any place of business of an insurer to inspect any
books or records of the insurer;

28 B. Notwithstanding any other provision of law, inspect any
30 records or reports filed by an insurer with the
Superintendent of Insurance; and

32 C. Delegate these powers to the Superintendent of
34 Insurance, his the superintendent's deputies, agents or
employees.

36 ~~7.---Civil action.---Whenever any insurer fails to pay any~~
38 ~~assessment due under this section within the time limit,--the~~
40 ~~Attorney General shall enforce payment by civil action against~~
42 ~~that insurer for the amount of the assessment in the Superior~~
44 ~~Court in and for the county or the District Court in the division~~
~~in which that insurer has his place of business,--or in the~~
~~Superior Court of Kennebec County.~~

46 8. **Definition.** For the purposes of this section, "insurer"
48 means an insurance company or association which that does
50 business or collects premiums for workers' compensation insurance
in this State or an individual or group self-insurer under this
Act, including the State and other public or governmental
authority.

2 **Sec. 4. 39 MRSA §57-D**, as enacted by PL 1991, c. 615, Pt. A,
3 §33, is repealed.

4 **Sec. 5. 39 MRSA §57-E**, as enacted by PL 1991, c. 615, Pt. A,
5 §34, is repealed.

6 **Sec. 6. 39 MRSA §104-A, sub-§2-B**, amended by PL 1989, c. 503,
7 Pt. B, §180, is further amended to read:

8 **2-B. Failure to secure payment.** If any employer, who is
9 required to secure the payment to his employees of the
10 compensation provided for by this Act, fails to do so, the
11 employer is subject to the penalties set out in paragraphs A, B
12 and C. The failure of any employer to procure insurance coverage
13 for the payment of compensation and other benefits to his
14 employees in compliance with sections 21-A and 23 constitutes a
15 failure to secure payment of compensation within the meaning of
16 this subsection.

17 A. The employer is guilty of a Class D crime.

18 B. The employer is liable to pay a civil penalty of up to
19 \$10,000, payable to the ~~Sevend---~~Injury Employment
20 Rehabilitation Fund.

21 C. The employer, if organized as a corporation, is subject
22 to revocation or suspension of its authority to do business
23 in this State as provided in Title 13-A, section 1302. The
24 employer, if licensed, certified, registered or regulated by
25 any board authorized by Title 5, section 12004-A, or whose
26 license may be revoked or suspended by proceedings in the
27 Administrative Court or by the Secretary of State, is
28 subject to revocation or suspension of his the employer's
29 license, certification or registration.

30 Prosecution under paragraph A does not preclude action under
31 paragraph B or C.

32 If the employer is a corporation, any agent of the corporation
33 having primary responsibility for obtaining insurance coverage is
34 liable for punishment under this section. Criminal liability
35 shall-be is determined in conformity with Title 17-A, sections 60
36 and 61.

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

FISCAL NOTE

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The bill provides a different mechanism for funding the Employment Rehabilitation Fund, administered by the Workers' Compensation Commission, and consequently eliminates an assessment on workers' compensation insurers. This may result in savings in workers' compensation costs to public employers, including the State.'

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STATEMENT OF FACT

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This amendment retains that portion of the original bill that abolishes the Second Injury Fund. The only change to the Employment Rehabilitation Fund in this amendment is a change in its funding mechanism. This amendment transfers the assets of the Second Injury Fund to the Employment Rehabilitation Fund and provides that any existing obligations of the Second Injury Fund will be paid by the Employment Rehabilitation Fund. All claims against the Second Injury Fund that may have existed under the former law but for which there is no obligation by that fund to pay as of the effective date of this bill are eliminated.

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This amendment repeals the assessment on insurers that was used as the funding mechanism for the Employment Rehabilitation Fund and redirects payments that, under current law, are deposited in the Second Injury Fund. Specifically, the Employment Rehabilitation Fund will receive payments made by the employer or insurer when an employee dies as a result of a work-related injury and leaves no dependents and payments made by uninsured employers as a civil penalty under the Maine Revised Statutes, Title 39, section 104-A, subsection 2-B. This amendment also adds a fiscal note.

Reported by the Committee on Labor
Reproduced and distributed under the direction of the Clerk of the House
3/23/92 (Filing No. H-1171)