

MAINE STATE LEGISLATURE

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116th MAINE LEGISLATURE

FIRST REGULAR SESSION-1993

Legislative Document

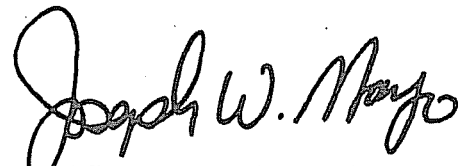
No. 1521

H.P. 1122

House of Representatives, May 17, 1993

An Act Related to Multiple-employer Welfare Arrangements.

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


JOSEPH W. MAYO, Clerk

Presented by Representative CARLETON of Wells. (GOVERNOR'S BILL)
Cosponsored by Representative: PINEAU of Jay.

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

4 Sec. 1. 24-A MRSA c. 79 is enacted to read:

6 CHAPTER 79

8 MULTIPLE-EMPLOYER WELFARE ARRANGEMENTS

10 §6601. Definitions

12 As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

14 1. Declaration of trust. "Declaration of trust" means a joint statement of those participating employers composing a multiple-employer welfare arrangement in which the purposes, plan of administration, rights and duties of the participants and the manner of funding obligations arising under the arrangement are established.

20 2. Fund balance. "Fund balance" means the total assets in excess of total liabilities, except that assets pledged to secure debts not reflected on the books of the multiple-employer welfare arrangement are not included in the fund balance. "Fund balance" includes other contributed capital, retained earnings and subordinated debt.

28 3. Funded trust. "Funded trust" means that legal entity created to receive, hold and administer contributions of employers participating in the arrangement that is composed of assets acceptable to the superintendent equal to or in excess of loss reserves and all other liabilities of the arrangement. A trust is not fully funded if any part of the corpus consists of a surety bond.

36 4. Insolvent or impaired condition. A multiple-employer welfare arrangement is "insolvent" or in an "impaired condition" when the fund balance is in a deficit position.

40 5. Multiple-employer welfare arrangement. "Multiple-employer welfare arrangement" or "arrangement" means an employer welfare benefit plan or any other arrangement that is established or maintained for the purpose of offering or providing health benefits to the employees of 2 or more employers or to their beneficiaries. "Multiple-employer welfare arrangement" does not include a plan or arrangement established or maintained before January 1, 1993 by the State, a political subdivision of the State or an association composed of political subdivisions of the State primarily to cover its employees, former employees or their dependents, nor does it include a plan

2 or arrangement established or maintained under or pursuant to one
4 or more agreements deemed collective bargaining agreements under
6 the federal Employee Retirement Income Security Act of 1974,
8 Section 3(40)(A)(i), as amended. For purposes of this chapter, 2
10 or more trades or businesses, whether or not incorporated, are
12 deemed a single employer if those trades or businesses are under
14 common ownership or within the same control group as defined
16 under the federal Employee Retirement Income Security Act of
18 1974, Section 3(40)(B).

20 **6. Participation agreement.** "Participation agreement"
22 means the document pursuant to which an employer undertakes and
24 agrees to fulfill the obligation of employers imposed by the
26 declaration of trust.

28 **7. Qualified financial institution.** "Qualified financial
30 institution" means an institution that is organized, or in the
32 case of a United States branch or agency office of a foreign
34 banking organization is licensed under the laws of the United
36 States or any state, and has been granted authority to operate
38 with fiduciary powers and is regulated, supervised and examined
40 by federal or state authorities having regulatory authority over
42 banks and trust companies.

44 **8. Third-party administrator.** "Third-party administrator"
46 or "administrator" means an administrator licensed pursuant to
48 chapter 18.

50 **§6602. Scope**

1 **1. Multiple-employer welfare arrangement; approval**
3 **required.** A person may not commence operations after January 1,
5 1994 of a multiple-employer welfare arrangement unless that
7 arrangement is approved by the superintendent. A person may not
9 operate after January 1, 1994 a multiple-employer welfare
11 arrangement in existence before January 1, 1994 unless that
13 arrangement has been submitted for approval in compliance with
15 this chapter.

17 **2. Insurer authorized to transact health insurance.** This
19 chapter does not apply to a multiple-employer welfare arrangement
21 that offers or provides benefits that are fully insured by an
23 insurer authorized to transact health insurance in the State.

25 **3. Application.** Section 6608 does not apply to a
27 multiple-employer welfare arrangement that:

29 **A. Meets the general eligibility requirements of section**
31 **6603, subsection 1;**

2 B. Is administered primarily from a principal place of
business located within the State; and

4 C. Has provided employee health benefits for a continuous
period since on or before January 1, 1984.

6 4. Application for approval; filing required. If a
multiple-employer welfare arrangement does not satisfy the
requirements of subsection 3, the arrangement shall file with the
superintendent within 60 days of the effective date of this
subsection a complete application for authorization under section
6604.

14 §6603. General eligibility

16 1. Requirements for approval. To meet the requirements for
approval and to maintain a multiple-employer welfare arrangement,
an arrangement:

20 A. Must be nonprofit;

22 B. Must be established by a trade association, industry
association, political subdivision of the State, religious
organization or professional association of employers or
professionals that has a constitution or bylaws and that has
been organized and maintained in good faith for a continuous
period of one year for purposes other than that of obtaining
or providing insurance;

30 C. Must be operated pursuant to a trust agreement by a
board of trustees that has complete fiscal control over the
arrangement and that is responsible for all operations of
the arrangement. The trustees selected must be owners,
partners, officers, directors or employees of one or more
employers in the arrangement. A trustee may not be an
owner, officer or employee of the administrator or service
company of the arrangement. The trustees have the authority
to approve applications of association members for
participation in the arrangement and to contract with a
state resident licensed administrator or service company to
administer the day-to-day affairs of the arrangement;

42 D. May not be offered, advertised or available to employers
or other members of the public generally; and

46 E. Must be operated in accordance with sound actuarial
principles.

48 2. Evidence of benefits; issuance to covered employee. The
arrangement shall issue to each covered employee a contract,

2 certificate, summary plan description or other evidence of the
3 benefits and coverages provided. This evidence of the benefits
4 and coverages provided must contain in boldface print in a
5 conspicuous location the following statement: "The benefits and
6 coverages described herein are provided through a trust fund
7 established and funded by a group of employers." Arrangements in
8 existence before October 1, 1993 that have previously issued
9 benefit descriptions to employees may meet the disclosure
10 requirements under this chapter by issuing to each employee
11 additional written material necessary to meet the requirements of
12 this subsection.

13
14 3. Maintenance of specific excess insurance. Each
15 arrangement shall maintain specific excess insurance with a
16 retention level determined in accordance with sound actuarial
17 principles and approved by the superintendent. The
18 superintendent may also require the arrangement to purchase
19 aggregate excess insurance.

20 4. Maintenance of appropriate loss reserves. Each
21 arrangement shall establish and maintain appropriate loss and
22 loss expense reserves determined in accordance with sound
23 actuarial principles and shall fund obligations by depositing
24 assets that will yield in a time frame matching maturing
25 liabilities of the arrangement sufficient funds to discharge
26 claims and other expense payments.

27
28 5. Funds held in trust. All funds of a multiple-employer
29 welfare arrangement must be held in trust in the name of the
30 arrangement in a qualified financial institution by state or
31 federally chartered financial institutions.

32
33 6. Replacement of trustee. The superintendent may not
34 grant or continue approval until the arrangement replaces any
35 trustee found by the superintendent:

36
37 A. To be incompetent, untrustworthy or financially
38 irresponsible;

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40 B. To be guilty of or to have pled guilty or no contest in
41 any state or country to a criminal offense for which
42 incarceration for one year or more may be imposed or for
43 which incarceration of one year or more could be imposed had
44 the offense occurred in this State, or that involves moral
45 turpitude, dishonesty, false statement or misappropriation
46 or conversion of property or funds;

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48 C. To have had any type of insurance license revoked in
49 this State or any other state; or
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2 D. To have improperly manipulated assets, accounts or
3 specific excess insurance or to have otherwise acted in bad
4 faith.

5 7. Contracts available for inspection. To qualify for and
6 retain approval to transact business, an arrangement must make
7 all contracts with administrators or service companies available
8 for inspection by the bureau initially and thereafter upon
9 reasonable notice.

10 8. Suspension or revocation of approval. Failure to
11 maintain compliance with applicable eligibility or filing
12 requirements established by this section is grounds for
13 suspension or revocation of authority of an arrangement.
14 However, with respect to deficiencies other than an impairment,
15 the arrangement has 60 days after notification by the
16 superintendent to take action necessary to correct the deficiency.

17 **§6604. Filing requirements**

18
19 The sponsoring association shall file with the
20 superintendent an application for authorization of the
21 arrangement upon a form to be furnished by the superintendent.
22 The application must include or have attached the following:

23 1. Constitution or bylaws. A copy of the constitution or
24 bylaws of the association;

25 2. Identification of trustees. The names and addresses of
26 the trustees of the arrangement;

27 3. Document governing operation. A copy of the declaration
28 of trust, trust agreement and any other documents that govern the
29 operation of the arrangement;

30 4. Evidence of benefits provided. A copy of the employer
31 participation agreement and the certificate, summary plan
32 description or other evidence of the benefits and coverage
33 provided to covered employees;

34 5. Proof of deposit or surety bond. Proof of deposit or a
35 copy of the surety bond required pursuant to section 6607;

36 6. Excess insurance agreement. A copy of the arrangement's
37 excess insurance agreement;

38 7. Evidence of sound actuarial principles. Evidence
39 satisfactory to the superintendent showing that the arrangement
40 will be operated in accordance with sound actuarial principles.
41 The superintendent may not approve the arrangement unless the
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2 superintendent determines that the plan is designed to provide
3 sufficient revenues to pay current and future liabilities, as
4 determined in accordance with sound actuarial principles; and

6 8. Additional information. Additional information that the
7 superintendent may reasonably require.

8 **§6605. Fund balance**

10 Each multiple-employer welfare arrangement shall maintain a
11 positive fund balance.

12 **§6606. Deficiency in reserves, assets or reinsurance**

14 1. Examination of finances. The superintendent may
15 conduct, upon reasonable notice, an examination to determine the
16 financial condition of an arrangement. Examiners duly qualified
17 by the superintendent may examine the loss reserves, assets,
18 liabilities, excess insurance and working capital of a
19 multiple-employer welfare arrangement. If the superintendent
20 finds that the reserves, excess insurance or assets may be
21 inadequate, or that the arrangement does not have working capital
22 in an amount establishing the financial strength and liquidity of
23 the arrangement to pay claims promptly and showing evidence of
24 the financial ability of the arrangement to meet its obligations
25 to covered employees, the superintendent shall notify the
26 arrangement of the inadequacy. Upon notification, the
27 arrangement shall file within 30 days with the superintendent its
28 written plan specifying remedial action to be taken and the time
29 for implementation of that plan.

31 2. Correction of deficiency. If the superintendent
32 determines, after reviewing the information filed, that a
33 hazardous financial condition exists, the arrangement shall
34 implement within 30 days its plan to correct any deficiencies and
35 shall file with the superintendent proof of remedial action taken
36 within 60 days. If the superintendent is satisfied that the plan
37 submitted to improve the inadequate condition of the arrangement
38 is sufficient, the superintendent shall notify the arrangement.
39 The arrangement shall report monthly to the superintendent until
40 any deficiencies and their causes have been corrected.

41 **§6607. Trust deposit or surety bond**

42 If the superintendent determines that a multiple-employer
43 welfare arrangement has failed to establish or maintain the
44 actuarially indicated level of funding in the trust account, the
45 superintendent may require the arrangement to file a security
46 deposit or a surety bond in accordance with this section.

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2 1. Deposit. If required, deposit funds, which may consist
3 of cash, securities or any combination of cash and securities
4 acceptable to the superintendent, must be filed with the
5 superintendent for deposit with the Treasurer of State in an
6 amount equal to the greater of either 25% of the immediately
7 preceding 12 months' health care claims expenditures or 15% of
8 the expected gross annual contributions for the current year. In
9 no case may the amount of the deposit be less than \$50,000 or
10 more than \$1,000,000 except that the superintendent, after due
11 notice to all interested parties and opportunity for hearing, and
12 after consideration of the records, may prescribe an amount in
13 excess of \$1,000,000. All income from deposits belongs to the
14 depositing arrangement and must be paid to it when received. An
15 arrangement that has made a security deposit, subject to approval
16 of the superintendent, may withdraw that deposit or any part of
17 that deposit after making a substitute deposit of cash,
18 securities or any combination of cash and securities of equal
19 amount and value. A judgment creditor or other claimant of a
20 multiple-employer welfare arrangement may not levy upon any of
21 the assets or securities held in this State as a deposit under
22 this section.

23 2. Surety bond in lieu of deposit. In lieu of the deposit
24 required under subsection 1, an arrangement may file with the
25 superintendent a surety bond in like amount. The bond must be
26 one issued by an authorized surety insurer, must be for the same
27 purpose as the deposit in lieu of which it is filed and must be
28 in a form prescribed by the superintendent. A bond may not be
29 canceled or subject to cancellation unless at least 60 days'
30 advance notice of cancellation in writing is filed with the
31 superintendent and the chair of the trustees.

32 3. Insolvency termination. In the event of a termination
33 of an arrangement due to insolvency, a determination of
34 impairment or the failure of the arrangement to pay any final
35 judgment rendered against it in this State within 30 days after
36 the judgment becomes final, the deposit held by the
37 superintendent pursuant to subsection 1 or the bond held by the
38 superintendent pursuant to subsection 2 must be applied to the
39 extent of the insolvency or to the extent of any default in
40 payment of benefit claims. Any deposit funds remaining in excess
41 of the amount needed to make the arrangement solvent must be
42 distributed in accordance with section 6610.

43 §6608. Forms

44 1. Approval of forms by superintendent required. A
45 participation agreement or contract form, application form,
46 certificate, rider, endorsement, summary plan description or
47 other evidence of coverage may not be issued by an arrangement
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2 unless the form and all changes to the form have been filed with
3 the superintendent by or on behalf of the arrangement that
4 proposes to use the form and have been approved by the
5 superintendent.

6 **2. Grounds for disapproval of forms by superintendent.** The
7 superintendent may disapprove a form filed under this section or
8 withdraw previous approval of a form only if the form:

10 A. Violates or does not comply with this chapter;

12 B. Contains or incorporates by reference inconsistent,
13 ambiguous or misleading clauses or exceptions and conditions
14 that deceptively affect the risk proposed to be assumed in
15 the general coverage of the contract;

16 C. Has any title, heading or other indication of its
17 provisions that is misleading;

18 D. Is printed or otherwise reproduced in such manner as to
19 render any material provision of the form substantially
20 illegible; or

21 E. Contains provisions that are unfair, inequitable or
22 encourage misrepresentation.

23 **§6609. Liability of participants**

24 **1. Liability of each employer participant.** The liability
25 of each employer participant for the obligations of the
26 multiple-employer welfare arrangement is joint and several.

27 **2. Contingent assessment liability.** Each employer
28 participant has a contingent assessment liability pursuant to
29 section 6610 for payment of actual losses and expenses incurred
30 while the participation agreement was in force.

31 **3. Statement of contingent liability.** Each participation
32 agreement or contract issued by the arrangement must contain a
33 statement of the contingent liability of employer participants.
34 Both the application for participation and the participation
35 agreement must contain, in contrasting color and not less than
36 10-point type, the following statement: "This is a fully
37 assessable contract. In the event the arrangement is unable to
38 pay its obligations, participating employers will be required to
39 contribute through an equitable assessment the money necessary to
40 meet any unfulfilled obligations."

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§6610. Termination

If an arrangement is terminated for any reason, the trust may not be dissolved until all outstanding claims, debts and obligations of the arrangement are paid. The arrangement may retain sufficient funds to provide coverage for such additional period as the trustees of the arrangement consider prudent. In addition, the trustees may purchase such additional insurance as they consider necessary for protection against potential future claims. Any funds remaining in the arrangement after satisfaction of all obligations must be paid to participating employers or covered employees in an equitable manner meeting with the approval of the superintendent, including, without ruling out other alternatives, equally on a per capita basis to each participating employer or employee who is covered under the arrangement as of the effective date of termination.

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§6611. Annual report; actuarial report

1. Filing required. Annually within 4 months of the end of the fiscal year or within such extension of time as the superintendent for good cause may grant, every arrangement shall file a report with the superintendent, verified by the oath of the chair of the board of trustees. The report must summarize the business activities of the trust for the immediately preceding year and must contain a financial statement of the arrangement, including its balance sheet and a statement of operations for the preceding year certified by an independent certified public accountant. The report must also include an analysis of the adequacy of reserves and contributions or premiums charged based on a review of past and projected claims and expenses.

2. Actuarial report. At least once every 2 years each arrangement must have a report prepared by an actuary who is an associate or fellow of the Society of Actuaries and the American Academy of Actuaries as to the actuarial soundness of the arrangement. The report must be filed with the superintendent. The report must consist of at least the following:

A. An assessment of the adequacy of contribution rates in meeting the level of benefits provided and changes, if any, needed in the contribution rates to achieve or preserve a level of funding adequate to enable payment of the benefit amounts provided under the arrangement, which must include a valuation of present assets, valued in accordance with insurance accounting precepts, and prospective assets and liabilities of the plan and the extent of unfunded accrued liabilities;

2 B. A plan and schedule to amortize any unfunded liabilities
3 and a description of actions taken to reduce unfunded
4 liabilities;

6 C. A description and explanation of actuarial assumptions;

8 D. A comparative review illustrating the level of funds
9 available to the arrangement from rates, investment income
10 and other sources realized over the period covered by the
11 report indicating the assumptions used;

12 E. A certification by the actuary that the report is
13 complete and accurate and that in the actuary's opinion the
14 techniques and assumptions used are reasonable, make good
15 and sufficient provision to meet the obligations of the
16 arrangement and meet the requirements and intent of this
17 chapter; and

18 F. Other factors or statements as may be reasonably
19 required by the superintendent in order to determine the
20 actuarial soundness of the plan.

22 **§6612. Place of business; records maintenance**

24 Each arrangement must have and maintain its principal place
25 of business in the State and must make available to the
26 superintendent complete records of its assets, transactions and
27 affairs in accordance with such methods and systems as are
28 customary for or suitable to the kind or kinds of business
29 transacted.

32 **§6613. Grounds for denial, suspension or revocation of**
33 **arrangement**

34 1. Mandatory denial, suspension or revocation. Subject to
35 other provisions of this chapter, the superintendent shall deny,
36 suspend or revoke an arrangement's authorization if the
37 superintendent finds that the arrangement:

40 A. Is impaired within the meaning of section 6601,
41 subsection 3;

42 B. Has refused to be examined or to produce its accounts,
43 records and files for examination, or if any of its officers
44 has refused to give information with respect to its affairs
45 or to perform any other legal obligation as to such
46 examination when required by the superintendent;

48 C. Has failed to pay a judgment rendered against it in the
49 State within 30 days after the judgment becomes final; or
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2 D. No longer meets the requirements for the authority
4 originally granted.

6 2. Discretionary denial, suspension or revocation. The
8 superintendent, in the superintendent's discretion, may deny,
10 suspend or revoke the authorization of an arrangement if the
12 superintendent finds that the arrangement:

14 A. Has violated this chapter or a lawful order or rule of
16 the superintendent;

18 B. Has refused to be examined or to produce its accounts,
20 records and files for examination, or if any of its officers
22 have refused to give information with respect to its affairs
24 or to perform any other legal obligation as to such
26 examination when required by the superintendent; or

28 C. Has failed to correct any deficiency determined pursuant
30 to section 6610.

32 **§6614. Violations**

34 In addition to any other penalties provided for by this
36 Title and subject to this chapter:

38 1. Civil penalty. An arrangement that fails to obtain and
40 maintain a valid approval from the superintendent while operating
42 or maintaining a multiple-employer welfare arrangement is subject
44 to a civil penalty of not less than \$5,000 or more than \$50,000
46 for each violation; and

48 2. Cease and desist order. The superintendent may issue a
50 cease and desist order if the superintendent finds a person
52 operating or maintaining a multiple-employer welfare arrangement
54 without a currently effective certificate of approval.

56 **§6615. Delinquency proceedings**

58 The rehabilitation, liquidation, conservation or dissolution
60 of a multiple-employer welfare arrangement must be conducted
62 under the supervision of the superintendent, who has all power
64 with regard to the rehabilitation, liquidation, conservation or
66 dissolution of a multiple-employer welfare arrangement granted to
68 the superintendent under the laws governing the rehabilitation,
70 liquidation, conservation or dissolution of insurers.

72 **§6616. Regulatory authority**

74 The superintendent may adopt, pursuant to Title 5, chapter
76 375, subchapter II, such rules as the superintendent determines

2 reasonable and necessary to carry out properly the functions and
3 responsibilities assigned under the laws of this State.

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6 **STATEMENT OF FACT**

7
8 The purpose of this bill is to promote access to group
9 health care benefits while avoiding some program costs associated
10 with the purchase of health insurance policies. The bill
11 establishes procedures under which employers may form
12 multiple-employer welfare arrangements to provide health care
13 benefits for employees and their dependents.

14 Eligibility standards are set to qualify trade associations,
15 industry associations, political subdivisions, religious
16 organizations and professional associations to ensure actuarially
17 viable plans. No capital funds are required to establish an
18 arrangement. Joint liability of participating employers is
19 required to ensure that benefits will be paid through assessments
20 if necessary. If the trust created by the employers is not
21 appropriately funded, the filing of a security deposit with the
22 Secretary of State or the posting of a bond is required. No
23 premium taxes are assessed on such plans. Annual reporting to
24 the Superintendent of Insurance is required and records of the
25 arrangement are to be kept in the State. The superintendent may
26 suspend or revoke the authority of arrangements that are operated
27 in an unsound fashion. Penalties are provided for arrangements
28 that operate without authority.