

MAINE STATE LEGISLATURE

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L.D. 1643

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DATE: March 20, 1996 (Filing No. S- 493)

BANKING AND INSURANCE

Reported by: The Majority of the Committee.

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**STATE OF MAINE
SENATE
117TH LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "A" to S.P. 635, L.D. 1643, Bill, "An Act to Clarify Certain Provisions Relating to Workers' Compensation Self-insurance"

Amend the bill by striking out everything after the enacting clause and before the emergency clause and inserting in its place the following:

Sec. 1. 24-A MRSA §2392, sub-§§22-A and 22-B are enacted to read:

22-A. Succession transaction. "Succession transaction" means an asset sale, merger, consolidation, reorganization or restructuring that creates a successor self-insured employer.

22-B. Successor self-insured employer. "Successor self-insured employer" means any self-insured employer that is a successor entity to another employer or employers doing business in this State. A successor self-insured employer includes any entity that purchases all or a portion of the assets of an employer or the surviving entity in any other merger, consolidation, reorganization or restructuring.

Sec. 2. 24-A MRSA §2393, sub-§2, ¶D, as enacted by PL 1995, c. 289, §11, is amended by amending subparagraph (2), division (c) to read:

(c) Each Except for a successor self-insured employer, each self-insured employer shall pay surcharges relating to only that portion of the

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policy years 1988 to 1992 in which the self-insured employer insured its workers' compensation obligations. The surcharge factor, as determined by the board under this chapter, must be adjusted to take into consideration the policy years or portions of policy years 1988 to 1992 in which a self-insured employer was self-insured.

The self-insured employer adjustment is determined as follows. The surcharge factor must be multiplied by the factor attributed to each of the years 1988 to 1992, as set forth in the table below. If a self-insured employer was insured only during a portion of a policy year, then the factor for that year is prorated based on the ratio of the number of days in the policy year during which the self-insured employer was insured to 365 days.

Policy Year	Factor
1988	28.48%
1989	30.70%
1990	23.26%
1991	11.55%
1992	6.01%

Sec. 3. 24-A MRSA §2393, sub-§2, ¶D, as enacted by PL 1995, c. 289, §11, is amended by enacting subparagraph (2), division (d), subdivision (iv) to read:

(iv) Upon the request of a self-insured employer, including a successor self-insured employer or an administrator of a self-insurance group, the board may determine whether there was a factual inaccuracy in the information underlying a surcharge billing issued by the board for the fresh start period or whether the surcharge calculated by the board is consistent with the provisions of this subparagraph. The request must be filed within 180 days from the date on which the final payment is due and must be in writing, including a statement of the reason for the request and the amount, if known, of the alleged overcharge. If an appeal based upon an alleged overcharge is sustained, the board shall refund the overcharge, together with any investment earnings on those amounts. If a self-insured employer is

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aggrieved by the final action or decision of the board, or if the board does not act on the written request within 60 days, the self-insured employer may appeal to the superintendent within 60 days of such action or decision of the board. Notwithstanding a pending appeal, a self-insured employer must pay any surcharge billing issued by the board.

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Sec. 4. 24-A MRSA §2393, sub-§2, ¶D, as enacted by PL 1995, c. 289, §11, is amended by repealing subparagraph (2), division (g) and enacting the following in its place:

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(g) A successor self-insured employer is subject to surcharge on the same basis as the predecessor employer would be if still actively doing business and self-insured. If a self-insured employer is the successor to more than one employer, then the successor employer's self-insured employer adjustment is the sum of each predecessor employer's self-insured employer adjustment multiplied by the ratio of the employer's surchargeable premium for the 12-month period immediately preceding the succession transaction to the combined surchargeable premium of all predecessor employers for that 12-month period.

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(i) If one or more of the predecessor employers was insured at the time of the succession transaction, its self-insured employer adjustment is calculated pursuant to division (c), (h) or (i) as if it had become self-insured at the time of the succession transaction.

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(ii) If business operations that were covered under a single workers' compensation policy or certificate of self-insurance authority are subsequently separately owned by virtue of any succession transaction, dissolution, reincorporation or other transaction or series of transactions, for purposes of this subparagraph each business is treated as a distinct employer, subject to surcharge as either an insured employer or a self-insured employer.

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(iii) If substantial changes in operations during the 12-month period immediately

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2 preceding the succession transaction make the
3 12-month surchargeable premium an
4 inappropriate measure of a predecessor
5 employer's workers' compensation exposure
6 prior to the transaction, the board may adopt
7 procedures for calculating an annualized
8 premium in a manner consistent with the
9 intent of this subparagraph.

10 Sec. 5. 24-A MRSA §2393, sub-§2, ¶D, as enacted by PL 1995, c.
11 289, §11, is amended by repealing subparagraph (2), division (h),
12 subdivision (i).

14 Sec. 6. 24-A MRSA §2393, sub-§2, ¶D, as enacted by PL 1995, c.
15 289, §11, is amended by enacting subparagraph (2), division (i)
16 to read:

18 (i) Except for any successor self-insured
19 employer, self-insured employers that commence
20 operations in the State on or after July 1, 1995
21 are subject to surcharge under this subparagraph
22 on the same basis as self-insured employers that
23 secured compensation under the Workers'
24 Compensation Act by the purchase of an insurance
25 policy throughout the entire fresh start period.

26 Sec. 7. 39-A MRSA §403, sub-§3, ¶C, as enacted by PL 1995, c.
27 398, §2, is amended to read:

28 C. A self-insurer may establish an actuarially determined
29 fully funded trust, funded at a level sufficient to
30 discharge those obligations incurred by the employer
31 pursuant to this Act as they become due and payable from
32 time to time, as long as the Superintendent of Insurance
33 requires that the value of trust assets be at least equal to
34 the present value of ultimate expected incurred claims and
35 claims settlement costs, plus required safety margins and,
36 if determined necessary by the superintendent,
37 administrative costs for the operation of the plan of
38 self-insurance. For the purpose of determining whether an
39 actuarially determined fully funded trust has a surplus of
40 funds in excess of that required by this subsection, the
41 superintendent shall consider, based upon the group's audit
42 for all completed plan years, only the following assets held
43 outside the trust account: cash up to \$10,000; accounts
44 receivable, limited to amounts collected and deposited in
45 the trust account by the date of the surplus distribution;
46 accrued interest on trust account assets that will be
47 collected and deposited in the trust account within 6 months
48 from the date of the surplus determination; tangible assets
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2 that will be converted to cash and deposited in the trust
 4 account prior to the distribution date of any surplus; and a
 6 letter of credit to be used to partially fund the trust to
 8 the extent allowed under this section and rules adopted by
 10 the superintendent, as supported in the actuarial review.
 12 The superintendent shall consider cash held outside the
trust account in excess of \$10,000 if the self-insurer
provides, to the superintendent's satisfaction,
documentation regarding why the money is being held outside
the trust account. An actuarially determined fully funded
 trust must be funded as follows, as determined by the
 superintendent.

14 (1) For individual and group self-insurers, the amount
 16 of security must be determined based upon an actuarial
 18 review. The actuarial review must take into
 20 consideration the use by a group self-insurer of any
 22 irrevocable standby letter of credit. Except as
 24 provided in subparagraph (3), initial funding for each
 plan year must be maintained at the 90% or higher
 confidence level. Funding after the completion of the
 initial plan year may be established no lower than the
 75% confidence level if the following has occurred:

- 26 (a) A year considered for reduction is completed;
- 28 (b) The supporting actuarial report review
 30 includes an evaluation of the completed year
 32 experience with claims evaluated not less than 6
months from the end of the plan year, or in the
case of a group self-insurer in existence for at
least 36 months, not less than 4 months from the
end of the plan year; and
- 34 (c) ~~Prior~~ For individual self-insurers, prior
 36 approval from the superintendent is obtained.

38 For the purposes of determining the confidence level,
 40 all completed years at the same confidence level may be
 42 aggregated. Funds For individual self-insurers, funds
 44 may not be released from the trust or transferred
 46 between years except as approved by the
 48 superintendent. The governing body of a group
 50 self-insurer may at any time declare a surplus of funds
above the required confidence level, but may only
release funds after the completion of any plan year.
The superintendent may request information regarding
any such declaration. Any distribution of surplus must
be based upon an actuarial review of all outstanding
obligations for all completed plan years, an audited

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financial statement of the group for all completed plan years and a surplus distribution worksheet for all completed plan years on a form approved by the superintendent. The group self-insurer must provide the required information within 10 days after the distribution. Any surplus declared or distributed pursuant to this paragraph is subject to adjustment after review by the superintendent within 60 days of the receipt of the required information. Any deficit below the required confidence level, as determined by the superintendent, that results from a distribution under this paragraph must be funded within 45 days from the date of the notice by the superintendent.

(2) A group self-insurer may elect to fund at a higher confidence level through the use of cash, marketable securities or reinsurance. If a member of a group self-insurer terminates membership in the group for any reason, that member shall fund the member's proportionate share of the liabilities and obligations of the trust to the 95% confidence level. If for any reason the departing member fails to fund the member's proportionate share of the trust's exposure to the 95% level of confidence, the remaining members of the group shall make the additional contribution no later than the anniversary date of the program as required to fund the departing member's exposure in accordance with this provision.

(3) Depending upon the financial condition of the self-insurer, and if approved by the superintendent, a self-insurer that has maintained an actuarially determined fully funded trust for a period of 5 or more consecutive years may fund all years, including the prospective fund year, in the aggregate at the 75% or higher confidence level.

(4) Trust assets must consist of cash or marketable securities of a type and risk character as specified in subsection 9. The trustee shall submit a report to the superintendent not less frequently than quarterly that lists the assets comprising the corpus of the trust, including a statement of their market value and the investment activity during the period covered by the report. The trust must be established and maintained subject to the condition that trust assets may not be transferred or revert in any manner to the employer except to the extent that the superintendent finds that the value of the trust assets exceeds the present value of incurred claims and claims settlement costs with an

actuarially indicated margin for future loss development. In all other respects, the trust instrument, including terms for certification, funding, designation of trustee and payout, must be as approved by the superintendent, except that the value of the trust account must be actuarially calculated at least annually by a casualty actuary who is a member of the American Academy of Actuaries and adjusted to the required level of funding.

Sec. 8. Retroactivity. Those sections of this Act that amend the Maine Revised Statutes, Title 24-A, sections 2392 and 2393 apply retroactively to July 1, 1995.'

Further amend the bill by inserting at the end before the statement of fact the following:

FISCAL NOTE

The Bureau of Insurance within the Department of Professional and Financial Regulation will incur some minor additional costs to administer certain requirements pertaining to surcharges issued by the Maine Workers' Compensation Residual Market Pool. These costs can be absorbed within the bureau's existing budgeted resources.'

STATEMENT OF FACT

This amendment replaces the bill and clarifies the definition of "successor self-insured employer" for the purpose of determining the applicable surcharge for the fresh start period. The surcharge of successor self-insured employers is calculated by using a formula based on whether the employer or employers combining to form the successor entity had any fresh start liability and the surchargeable premium of each employer. The amendment also gives self-insured employers the ability to appeal a surcharge billing to the governing board of the Workers' Compensation Residual Market Pool for a determination as to whether the billing is consistent with the Maine Revised Statutes, Title 24-A, section 2393 or whether there was a factual inaccuracy in the information underlying a surcharge issued by the board.

The amendment adds a retroactivity provision for the purposes of determining the surcharge liability for the fresh start period of successor self-insured employers after July 1, 1995.

The amendment allows all group self-insurers to declare surplus funds above the required confidence level without prior approval of the Superintendent of Insurance and to distribute

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surplus funds and file information with the superintendent. It clarifies what assets held outside the trust fund may be considered when determining surplus.

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The amendment also adds a fiscal note to the bill.

COMMITTEE AMENDMENT