

MAINE STATE LEGISLATURE

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117th MAINE LEGISLATURE

SECOND REGULAR SESSION-1996

Legislative Document

No. 1643

S.P. 635

In Senate, January 8, 1996

**An Act to Clarify Certain Provisions Relating to Workers' Compensation
Self-insurance.**

(EMERGENCY)

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 26.
Reference to the Committee on Banking and Insurance suggested and ordered printed.

A handwritten signature in cursive script, reading "May M. Ross", is positioned above the printed name of the Secretary of the Senate.

MAY M. ROSS
Secretary of the Senate

Presented by Senator ABROMSON of Cumberland.
Cosponsored by Representative: VIGUE of Winslow.

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

4 Whereas, the Legislature adopted the Workers' Compensation
6 Residual Market Deficit Resolution and Recovery Act on June 23,
1995; and

8 Whereas, the definition of "successor self-insured employer"
10 and the applicable surcharge of a successor entity are unclear;
and

12 Whereas, the Legislature wishes to clarify its intent
14 regarding a successor self-insured employer; and

16 Whereas, the Legislature intends that this legislation be
retroactive to June 23, 1995, when the Workers' Compensation
18 Residual Market Deficit Resolution and Recovery Act was approved;
and

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

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

28 **Sec. 1. 24-A MRSA §2393, sub-§2, ¶D,** as enacted by PL 1995, c.
30 289, §11, is amended by amending subparagraph (2), division (c)
to read:

32 (c) Each Except for a successor self-insured
34 employer as defined in Title 39-A, section 403-A,
each self-insured employer shall pay surcharges
36 relating to only that portion of the policy years
1988 to 1992 in which the self-insured employer
38 insured its workers' compensation obligations.
The surcharge factor, as determined by the board
40 under this chapter, must be adjusted to take into
consideration the policy years or portions of
42 policy years 1988 to 1992 in which a self-insured
employer was self-insured.

44 The adjustment is determined as follows. The
46 surcharge factor must be multiplied by the factor
attributed to each of the years 1988 to 1992, as
48 set forth in the table below. If a self-insured
employer was insured only during a portion of a
50 policy year, then the factor for that year is

2 prorated based on the ratio of the number of days
3 in the policy year during which the self-insured
4 employer was insured to 365 days.

	Policy Year	Factor
6	1988	28.48%
	1989	30.70%
8	1990	23.26%
	1991	11.55%
10	1992	6.01%

12 **Sec. 2. 24-A MRSA §2393, sub-§2, ¶D**, as enacted by PL 1995, c.
13 289, §11, is amended by repealing subparagraph (2), division (g).

14 **Sec. 3. 24-A MRSA §2393, sub-§2, ¶D**, as enacted by PL 1995, c.
15 289, §11, is amended by amending subparagraph (2), division (h),
16 subdivision (i) to read:

17 (i) Self-insured Except for any successor
18 self-insured employer as defined in Title
19 39-A, section 403-A, self-insured employers
20 that commence operations in the State on or
21 after July 1, 1995 are subject to surcharge
22 under this subparagraph on the same basis as
23 self-insured employers that secured
24 compensation under the Workers' Compensation
25 Act by the purchase of an insurance policy
26 throughout the entire fresh start period.

27 **Sec. 4. 39-A MRSA §403-A** is enacted to read:

28 **§403-A. Fresh start surcharge for successor self-insured**
29 **employers**

30 **1. Definitions.** As used in this section, unless the
31 context otherwise indicates, the following terms have the
32 following meanings.

33 A. "Board" means the governing board of the Maine Workers'
34 Compensation Residual Market Pool.

35 B. "Fresh start period" means the period from January 1,
36 1988 to December 31, 1992.

37 C. "Successor self-insured employer" means any successor
38 entity to a self-insured employer. A successor entity
39 includes any entity, referred to in this section as the
40 "other entity," that purchases all or a portion of the
41 assets of a self-insured employer, referred to in this

2 section as the "predecessor self-insured company," or the
3 surviving entity in any other merger, consolidation,
4 reorganization or restructuring involving a predecessor
5 self-insured company and any other entity. If business
6 operations that were insured under a single workers'
7 compensation insurance policy during any portion of the
8 fresh start period are subsequently separately owned by
9 virtue of any sale of assets, merger, consolidation,
10 reorganization, dissolution, reincorporation, restructuring
11 or other transaction or series of transactions, for purposes
12 of this section each business is treated as a distinct
13 employer, subject to surcharge as either an insured employer
14 or a self-insured employer.

15 **2. Surcharge.** Notwithstanding the provisions of Title
16 24-A, section 2393, subsection 2, paragraph D, each successor
17 self-insured employer shall pay surcharges for the fresh start
18 period calculated by multiplying the surcharge factor, as
19 determined by the board under Title 24-A, chapter 26, by the
20 successor entity factor determined in accordance with this
21 subsection.

22 The successor entity factor is the sum of:

23 **A.** The self-insured factor, if any, of the predecessor
24 self-insured company multiplied by the ratio of the
25 predecessor self-insured company's state payroll as of
26 January 1st of the year in which the successor entity was
27 formed to the combined state payroll of the predecessor
28 self-insured company and the other entity as of January 1st
29 of the year in which the successor entity was formed; and

30 **B.** The self-insured factor, if any, of the other entity if
31 the entity is self-insured, or 100% if the other entity is
32 commercially insured multiplied by the ratio of the other
33 entity's state payroll as of January 1st of the year in
34 which the successor entity was formed to the combined state
35 payroll of the other entity and the predecessor self-insured
36 company as of January 1st of the year in which the successor
37 entity was formed.

38 **3. Appeal of fresh start surcharge.** Upon the request of a
39 self-insured employer, including a successor self-insured
40 employer, or an administrator of a self-insurance group, the
41 superintendent may determine whether there was a factual
42 inaccuracy in the information underlying a surcharge billing
43 issued by the board for the fresh start period or whether the
44 surcharge calculated by the board is consistent with the
45 provisions of Title 24-A, section 2393, subsection 2, paragraph
46 D, subparagraph 2. The request must be in writing and include 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 Superintendent of Insurance shall
order a refund of the overcharge plus interest at the rate of 10%
per annum. Notwithstanding a pending appeal, a self-insured
employer must pay any surcharge billing issued by the board.

4. Applicability. The definition of "successor
self-insured employer" applies only for the purpose of
determining the surcharge of a self-insured employer for the
fresh start period.

Sec. 5. Retroactivity. This Act applies retroactively to June
23, 1995.

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

STATEMENT OF FACT

This bill clarifies the definition of "successor
self-insured employer" for the purposes of determining the
applicable surcharge for the fresh start period. The surcharge
of successor entities to self-insured employers is calculated by
using a formula based on whether the predecessor self-insured
company has any fresh start liability and the payroll of the
predecessor self-insured company and the other entity that
combine to form the successor entity. The bill also gives
self-insured employers the ability to appeal a surcharge billing
to the Superintendent of Insurance for a determination whether
the billing is consistent with the definition of "successor
self-insured employer" or whether there was a factual inaccuracy
in the information underlying a surcharge issued by the governing
board of the Maine Workers' Compensation Residual Market Pool.

The bill applies retroactively to June 23, 1995.