L.D. 1761

DATE: March 11, 1996 (Filing No. S-464)

LABOR

Reported by: Senator BEGLEY of Lincoln for the Committee.

Reproduced and distributed under the direction of the Secretary of the Senate.

STATE OF MAINE
SENATE
117TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A " to S.P. 689, L.D. 1761, Bill, "An Act to Amend the Laws Regarding Employee Leasing Companies"

Amend the bill in the emergency preamble in the 5th paragraph in the first and 2nd lines (page 1, lines 16 and 17 in L.D.) by striking out the following: "transferring responsibilities for registration to the Department of Labor and"

Further amend the bill by inserting after the enacting clause and before section 1 the following:

'**Sec. 1. 24-A MRSA §601, sub-§24** is enacted to read:

24. Multiple-employer welfare arrangements. Applications for authorization $500.'

Further amend the bill by striking out all of sections 4 to 10 and inserting in their place the following:

'**Sec. 4. 24-A MRSA §6601, sub-§5,** as enacted by PL 1993, c. 688, §1, is amended to read:

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. For the purposes of this chapter only, an employer welfare benefit plan or any other arrangement that, after April 30, 1996, is established or maintained for the purpose of offering or providing health benefits to employees leased to client companies by an employee leasing company required to be registered under Title 32, chapter 125 must be treated as a multiple-employer welfare arrangement within the meaning of this chapter. "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 or arrangement established or maintained under or pursuant to one or more agreements deemed collective bargaining agreements under the federal Employee Retirement Income Security Act of 1974, Section 3(40)(A)(i), as amended. For purposes of this chapter, 2 or more trades or businesses, whether or not incorporated, are deemed a single employer if those trades or businesses are under common ownership or within the same control group as defined under the federal Employee Retirement Income Security Act of 1974, Section 3(40)(B). For the purposes of this chapter only, each of an employee leasing company's client companies, as defined in Title 32, section 14051, is considered a separate employer as long as it is not deemed a single employer under this subsection.

Sec. 5. 24-A MRSA §6603, as enacted by PL 1993, c. 688, §1, is amended by enacting a new first paragraph to read:

This section governs all multiple-employer welfare arrangements except for those offered by a registered employee leasing company complying with the requirements of section 6603-A.

Sec. 6. 24-A MRSA §6603-A is enacted to read:

§6603-A. Employee leasing companies

An employee leasing company that provides health benefits on other than a fully insured basis for employees leased to client companies shall comply with the requirements of this section.

1. Requirements for approval. The arrangement must meet the requirements of this subsection to obtain approval to establish a multiple-employer welfare arrangement or to maintain operations of a multiple-employer welfare arrangement.

A. The employee leasing company must be registered in this State in accordance with Title 32, chapter 125.

B. Within 4 months of the end of each fiscal year or within

such extension of time as the superintendent for good cause may grant, the arrangement shall file with the superintendent an annual financial report certified by an independent certified public accountant. The report must include a letter of qualification from the accountant that meets the requirements of section 6611, subsection 1-A. The report must provide the name and address of the insurer providing excess insurance and it 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.

C. Within 45 days of the end of each fiscal quarter, the arrangement shall file with the superintendent a letter from an independent certified public accountant attesting to the following:

(1) That the employees have been paid in a timely fashion;

(2) That all payroll taxes and income taxes withheld have been paid to the appropriate state or federal agency in a timely fashion;

(3) With respect to any health care benefits provided on other than a fully insured basis, that specific excess insurance is maintained with a retention level adequate for the plan; and

(4) With respect to any health care benefits provided on other than a fully insured basis, that appropriate loss and loss expense reserves are maintained that are adequate for the plan.

D. Any necessary excess insurance must be purchased from an insurer licensed to transact health or casualty insurance in the State.

E. The arrangement shall issue to each covered employee a contract, certificate, summary plan description or other evidence of the benefits and coverages provided. This evidence of the benefits and coverages provided must contain in boldface print in a conspicuous location the following statement: "The benefits and coverages described herein are provided by [name of employee leasing company] on a self-insured basis, not through a contract with a commercial insurance carrier." If the benefit plan or arrangement was in existence before April 30, 1996 and had previously issued benefit descriptions to the covered employees, the arrangement shall issue to each employee the additional

written material necessary to meet the requirements of this paragraph.

F. The arrangement must pay the filing fee specified in section 601 at the time of the application for approval.

2. Application for approval. To obtain approval, an arrangement must submit a letter of application to the Superintendent that includes or has attached the material required by subsection 1. If any information is not available at the time of application, the arrangement shall specify in the letter when that information will be provided. The superintendent, in the superintendent's discretion, may grant approval of an arrangement conditioned upon the timely receipt of the required information if the superintendent determines that the arrangement is funded at a level consistent with the purposes of this chapter.

3. Other provisions. An arrangement approved pursuant to the requirements of this section is also subject to the requirements of sections 6606, 6607, 6610, 6614 and 6616.

4. Grounds for denial, suspension or revocation of arrangement. The superintendent, in the superintendent's discretion, may deny, suspend or revoke the authorization granted pursuant to this section if the superintendent finds that the arrangement has failed to meet the requirements of this section, has refused to produce the required financial information or has refused to correct a deficiency determined pursuant to section 6606. When failure to maintain compliance with the requirements of this section is the grounds for suspension or revocation of authority of an arrangement, the arrangement has 60 days after notification by the superintendent to take action necessary to correct the deficiency.

Sec. 7. 24-A MRSA §6604, sub-§§7 and 8, as enacted by PL 1993, c. 688, §1, are amended to read:

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

8. Additional information. Additional information that the superintendent may reasonably require~~.~~ ; and

Sec. 8. 24-A MRSA §6604, sub-§9 is enacted to read:

9. Filing fee. The filing fee specified in section 601.

Sec. 9. 24-A MRSA §6606, sub-§1, as enacted by PL 1993, c. 688, §1, is amended to read:

1. Examination of finances. The superintendent may conduct, upon reasonable notice, an examination to determine the financial condition of an arrangement. ~~Examiners~~ For arrangements subject to the requirements of section 6603-A, the examination must be limited to the work of the certified public accountant conducting the annual audit or submitting the quarterly filings required by that section. For all other arrangements, examiners duly qualified by the superintendent may examine the loss reserves, assets, liabilities, excess insurance and working capital of a multiple-employer welfare arrangement. If the superintendent finds that the reserves, excess insurance or assets may be inadequate, or that the arrangement does not have working capital in an amount establishing the financial strength and liquidity of the arrangement to pay claims promptly and showing evidence of the financial ability of the arrangement to meet its obligations to covered employees, the superintendent shall notify the arrangement of the inadequacy. Upon notification, the arrangement shall file within 30 days with the superintendent its written plan specifying remedial action to be taken and the time for implementation of that plan.

Sec. 10. 24-A MRSA §6607, first ¶, as enacted by PL 1993, c. 688, §1, is amended to read:

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

Sec. 11. 24-A MRSA §6610, as enacted by PL 1993, c. 688, §1, is amended to read:

§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~~ an 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. Written notice of the termination of the arrangement must be provided to each covered employee, the Department of Labor, Bureau of Labor Standards and the superintendent at least 10 days before the effective date of the termination.

If an arrangement provided by a registered employee leasing company is terminated for any reason, written notice of the termination of the arrangement must be provided by the employee leasing company to each covered employee, the client companies involved, the Department of Labor, Bureau of Labor Standards and the superintendent at least 10 days before the effective date of the termination.'

Further amend the bill by inserting after section 11 the following:

'**Sec. 12. 24-A MRSA §6616,** as enacted by PL 1993, c. 688, §1, is amended to read:

§6616. Regulatory authority

The superintendent may adopt, pursuant to Title 5, chapter 375, subchapter II, ~~such~~ rules as that the superintendent determines reasonable and necessary to carry out properly the functions and responsibilities assigned under the laws of this State. Rules adopted to implement the provisions of this chapter are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.'

Further amend the bill in section 14 in subsection 6 in the 9th and 10th lines (page 6, lines 29 and 30 in L.D.) by striking out the following: "Department of the Attorney General and the Bureau of Employment Security" and inserting in its place the following: 'Bureau of Labor Standards'

Further amend the bill by relettering or renumbering any nonconsecutive Part letter or section number to read consecutively.

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

FISCAL NOTE

The establishment of certain applications of authorizations for multiple-employer welfare arrangements will result in insignificant increases of dedicated revenue to the Bureau of Insurance within the Department of Professional and Financial Regulation from one-time application fees.

The Bureau of Insurance will incur some minor additional costs to administer certain regulatory requirements pertaining to self-insured multiple-employer welfare arrangements. These costs can be absorbed within the bureau's existing budgeted resources.

The Department of Economic and Community Development, the Department of Administrative and Financial Services, the Department of Labor, the Department of Professional and Financial Regulation and the Workers' Compensation Board will incur some minor additional costs to participate in reviews of the employee leasing industry. These costs can be absorbed within the agencies' existing budgeted resources.'

STATEMENT OF FACT

The original bill provided that a health benefit plan offered by an employee leasing company would be considered a multiple-employer welfare arrangement under Maine's law regulating those arrangements. If any such plan is provided on a self-insured basis, current law requires that the multiple-employer welfare arrangement be set up as a separate trust and comply with various filing, reporting and actuarial standards.

This amendment also classifies a health benefit plan provided by an employee leasing company as a multiple-employer welfare arrangement and regulates the plan if it is offered on a self-insured basis. The amendment provides a less stringent approval process for plans offered by an employee leasing company than is required of other multiple-employer welfare arrangements. This regulation applies to existing self-insured plans that continue to be provided after April 30, 1996 and all new self-insured plans established on or after April 30, 1996. For approval of a multiple-employer welfare arrangement offered by an employee leasing company, the following requirements must be met: The leasing company must be registered in Maine; an annual audited financial report must be submitted to the Bureau

of Insurance; and a certified public accountant must attest on a quarterly basis that employees are being paid, taxes are being paid and adequate reserves and excess insurance are being maintained. The excess insurance must be provided by an insurer licensed in Maine. The Superintendent of Insurance is authorized to approve an arrangement conditioned upon the timely receipt of the required information if the superintendent determines that the arrangement is properly funded. The amendment also adds a one-time filing fee for all multiple-employer welfare arrangements subject to the Maine Revised Statutes, Title 24-A, chapter 81.

The amendment also removes those provisions in the original bill that transferred the registration of employee leasing companies from the Bureau of Insurance to the Department of Labor, classifies the rules that may be adopted and adds a fiscal note to the bill.