

MAINE STATE LEGISLATURE

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117th MAINE LEGISLATURE

SECOND REGULAR SESSION-1996

Legislative Document

No. 1761

S.P. 689

In Senate, February 6, 1996

An Act to Amend the Laws Regarding Employee Leasing Companies.

(EMERGENCY)

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

A handwritten signature in cursive script that reads "May M. Ross".

MAY M. ROSS
Secretary of the Senate

Presented by Senator HANLEY of Oxford.

Cosponsored by Representative BENEDIKT of Brunswick and

Senators: BEGLEY of Lincoln, BERUBE of Androscoggin, CLEVELAND of Androscoggin, FERGUSON of Oxford, Representatives: AHEARNE of Madawaska, BOUFFARD of Lewiston, DiPIETRO of South Portland, DORE of Auburn, FITZPATRICK of Durham, GWADOSKY of Fairfield, KERR of Old Orchard Beach, KILKELLY of Wiscasset, KONTOS of Windham, LaFOUNTAIN of Biddeford, MITCHELL of Vassalboro, MURPHY of Berwick, NADEAU of Saco, ROBICHAUD of Caribou, SIROIS of Caribou, TOWNSEND of Portland, TUTTLE of Sanford, UNDERWOOD of Oxford, VIGUE of Winslow, WHITCOMB of Waldo, WINGLASS of Auburn, WINSOR of Norway.

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 recent collapse of an employee leasing company
6 caused financial harm to many former employees and former client
companies due to unfunded health care benefit plans; and

8 Whereas, employee leasing companies play an important role
10 in the economic development of this State; and

12 Whereas, immediate steps are necessary to ensure that
employee leasing companies do not offer self-insured health
14 benefits without proper funding; and

16 Whereas, transferring responsibilities for registration to
the Department of Labor and having state officials work together
18 to monitor the development and regulation of the employee leasing
industry will benefit employers, employees and the leasing
20 industry directly; and

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

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

30 **Sec. 1. 24-A MRSA §2612-A, sub-§2-A** is enacted to read:

32 2-A. Notwithstanding subsections 1 and 2, an employee
leasing company registered pursuant to Title 32, chapter 125
34 qualifies as an eligible group for purposes of the purchase of
group life insurance as provided in this section.

36 **Sec. 2. 24-A MRSA §2808, sub-§2-A** is enacted to read:

38 2-A. Notwithstanding subsections 1 and 2, an employee
40 leasing company registered pursuant to Title 32, chapter 125
qualifies as an eligible group for purposes of the purchase of
42 group life insurance as provided in this section.

44 **Sec. 3. 24-A MRSA §2884**, as enacted by PL 1983, c. 801, §11,
is amended to read:

46 **§2884. Legal services insurance authorized to be sold on a group**
48 **basis**

2 Any An insurance company authorized to write legal services
3 insurance in this State, which for the purposes of this chapter
4 only ~~shall be deemed to be~~ is considered a form of health
5 insurance, ~~shall have~~ has the power to issue group legal services
6 insurance policies or may, by providing for the mental and
7 emotional welfare of individuals and members of his an
8 individual's family by defraying the costs of legal services,
9 include legal services insurance in and as a part of a group
10 health insurance policy. Group legal services insurance is that
11 form of voluntary legal services insurance covering employees or
12 members, with or without their eligible dependents, written under
13 a master policy issued to any governmental corporation, unit,
14 agency or department or to any employer ~~or~~, association of
15 employers or employee leasing company registered pursuant to
16 Title 32, chapter 125, including the trustee or trustees of a
17 fund established by that employer ~~or~~, association of employers or
18 registered employee leasing company, a labor union or other
19 employee organization, including the trustees of a fund
20 established by that labor union or employee organization. The
21 terms "employee" and "employees" shall have the same meaning as
22 are given to those terms for the purposes of writing group life
23 insurance in this State. Legal services insurance ~~shall~~ may only
24 ~~be permitted to~~ be issued in this State on a group policy basis.

25 **Sec. 4. 24-A MRSA §6601, sub-§5**, as enacted by PL 1993, c.
26 688, §1, is amended to read:

27 **5. Multiple-employer welfare arrangement.**
28 "Multiple-employer welfare arrangement" or "arrangement" means an
29 employer welfare benefit plan or any other arrangement that is
30 established or maintained for the purpose of offering or
31 providing health benefits to the employees of 2 or more employers
32 or to their beneficiaries. "Multiple-employer welfare
33 arrangement" or "arrangement" also means an employer welfare
34 benefit plan or any other arrangement that, after April 30, 1996,
35 is established or maintained for the purpose of offering or
36 providing health benefits to employees leased to client companies
37 by an employee leasing company required to be registered under
38 Title 32, chapter 125. "Multiple-employer welfare arrangement"
39 does not include a plan or arrangement established or maintained
40 before January 1, 1993 by the State, a political subdivision of
41 the State or an association composed of political subdivisions of
42 the State primarily to cover its employees, former employees or
43 their dependents, nor does it include a plan or arrangement
44 established or maintained under or pursuant to one or more
45 agreements deemed collective bargaining agreements under the
46 federal Employee Retirement Income Security Act of 1974, Section
47 3(40)(A)(i), as amended. For purposes of this chapter, 2 or more
48 trades or businesses, whether or not incorporated, are deemed a
49 single employer if those trades or businesses are under common
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2 ownership or within the same control group as defined under the
3 federal Employee Retirement Income Security Act of 1974, Section
4 3(40)(B). Each of an employee leasing company's client
5 companies, as defined in Title 32, section 14051, is considered a
6 separate employer as long as it is not deemed a single employer
7 under this subsection.

8 **Sec. 5. 24-A MRSA §6603, sub-§1, ¶B,** as enacted by PL 1993, c.
9 688, §1, is amended to read:

10 B. Must be established by a trade association, industry
11 association, political subdivision of the State, religious
12 organization, employee leasing company required to be
13 registered pursuant to Title 32, chapter 125 or professional
14 association of employers or professionals that has a
15 constitution or bylaws and that has been organized and
16 maintained in good faith for a continuous period of one year
17 for purposes other than that of obtaining or providing
18 insurance;

19
20 **Sec. 6. 24-A MRSA §6604, first ¶,** as enacted by PL 1993, c.
21 688, §1, is amended to read:

22 The sponsoring association or employee leasing company shall
23 file with the superintendent an application for authorization of
24 the arrangement upon a form to be furnished by the
25 superintendent. The application must include or have attached
26 the following:

27
28 **Sec. 7. 24-A MRSA §6604, sub-§1,** as enacted by PL 1993, c.
29 688, §1, is amended to read:

30
31 1. **Constitution or bylaws.** A copy of the constitution or
32 bylaws of the association or, in the case of an employee leasing
33 company, a copy of the bylaws of the corporation and a
34 representative copy of a contract with a client company for
35 employee leasing services;

36
37 **Sec. 8. 24-A MRSA §6604, sub-§5-A** is enacted to read:

38
39 **5-A. Fidelity bond.** A bond in favor of the State issued by
40 an authorized surety insurer. Approval of each arrangement is
41 conditioned upon this bond being maintained in force.

42
43 A. The bond must be conditioned upon full accounting and
44 due payment to the entitled person of funds coming into the
45 arrangement. The bond may be continuous in form and the
46 aggregate payment on the bond must be set at a reasonable
47 and economically feasible level.

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2 B. The bond must remain in force until released by the
3 superintendent or until cancelled by the surety. The surety
4 may cancel the bond upon 30 days' advance written notice to
5 both the arrangement and the superintendent. The
6 arrangement's approval terminates upon cancellation by the
7 surety and failure to procure a satisfactory replacement
8 bond prior to cancellation.

9 **Sec. 9. 24-A MRSA §6610**, as enacted by PL 1993, c. 688, §1,
10 is amended to read:

11 **§6610. Termination**

12 If an arrangement is terminated for any reason, the trust
13 may not be dissolved until all outstanding claims, debts and
14 obligations of the arrangement are paid. The arrangement may
15 retain sufficient funds to provide coverage for such an
16 additional period as the trustees of the arrangement consider
17 prudent. In addition, the trustees may purchase such additional
18 insurance as they consider necessary for protection against
19 potential future claims. Any funds remaining in the arrangement
20 after satisfaction of all obligations must be paid to
21 participating employers or covered employees in an equitable
22 manner meeting with the approval of the superintendent,
23 including, without ruling out other alternatives, equally on a
24 per capita basis to each participating employer or employee who
25 is covered under the arrangement as of the effective date of
26 termination. Written notice of the termination of the
27 arrangement must be provided to each covered employee, the Bureau
28 of Labor Standards and the superintendent at least 10 days before
29 the effective date of the termination.

30 **Sec. 10. 24-A MRSA §6611, sub-§1**, as enacted by PL 1993, c.
31 688, §1, is amended to read:

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

2
3 **Sec. 11. 24-A MRSA §6611, sub-§1-A** is enacted to read:

4 1-A. Accountant's letter or qualification. The annual
5 financial statement of the arrangement must include a letter of
6 qualification from the certifying accountant stating:

7 A. That the accountant is independent with respect to the
8 arrangement and conforms to the standards of the
9 accountant's profession as contained in the code of
10 professional ethics and pronouncements of the American
11 Institute of Certified Public Accountants and the rules of
12 professional conduct of the appropriate state Board of
13 Accountancy or similar code;

14 B. The background and experience in general and the
15 experience in audits or arrangements of the staff assigned
16 to the engagement and whether each is an independent
17 certified public accountant. This requirement may not be
18 construed as prohibiting the accountant from utilizing staff
19 as the accountant considers appropriate where that is
20 consistent with the standards prescribed by generally
21 accepted auditing standards;

22 C. That the accountant understands the annual audited
23 financial report and the accountant's opinion will be filed
24 in compliance with this requirement and that the accountant
25 knows the superintendent will be relying on this information
26 in the monitoring and regulation of the financial position
27 of the arrangement;

28 D. That the accountant consents and agrees to make
29 available for review by the superintendent or the
30 superintendent's designee or appointed agent, the
31 accountant's workpapers relating to the arrangement. For
32 purposes of this paragraph, workpapers are the records kept
33 by the accountant of the procedures followed, the tests
34 performed, the information obtained and the conclusions
35 reached pertinent to the accountant's examination of the
36 financial statements of the arrangement. Workpapers may
37 include audit planning documents, work programs, analyses,
38 memoranda, letters of confirmation and representation,
39 abstracts of arrangement documents and schedules or
40 commentaries prepared or obtained by the accounts in the
41 course of the accountant's examination; and

42 E. A representation that the accountant is properly
43 licensed by an appropriate state licensing authority and
44 that the accountant is a member in good standing in the
45 American Institute of Certified Public Accountants.

2 **Sec. 12. 26 MRSA §1401, sub-§§3 and 4**, as enacted by PL 1971,
c. 620, §12, are amended to read:

4 **3. Purchase.** Coordinate the purchase and use of all the
department equipment; and

6 **4. Review.** Review the function and operation of the
8 department to insure that overlapping functions and operations
are brought to the attention of the Governor and Legislature+;

10 **Sec. 13. 26 MRSA §1401, sub-§5**, as enacted by PL 1983, c. 469,
12 §2, is amended to read:

14 **5. Data collection.** ~~The--Commissioner--of--Labor--shall~~
eenduet Conduct a survey of manufacturing and nonmanufacturing
16 industries throughout the State once every 2 years to determine
hourly occupational wage rates by sex+; and

18 **Sec. 14. 26 MRSA §1401, sub-§6** is enacted to read:

20 **6. Monitor employee leasing industry.** Coordinate the
22 efforts of the State to ensure that the employee leasing industry
is developing in a manner that provides the greatest benefit to
24 Maine employers while minimizing the financial risk to those
employers and to the leased employees. The commissioner shall
26 meet at least annually with representatives of the Bureau of
Insurance, the Bureau of Taxation, the Department of Economic and
28 Community Development, the Workers' Compensation Board, the
Department of the Attorney General and the Bureau of Employment
30 Security within the Department of Labor. This group shall
develop written material for employers and new businesses that
32 are considering using an employee leasing firm. The material
must provide guidance for employers on what questions to ask to
34 minimize their own financial risk and that of their employees.
The material must also include instructions on how to obtain
36 public information on employee leasing companies, such as
information required for registration purposes. The commissioner
38 shall meet with the state officials listed in this subsection on
at least an annual basis to review the status of the employee
40 leasing industry and update the written materials as needed.

42 **Sec. 15. 32 MRSA §14051, sub-§1-A** is enacted to read:

44 **1-A. Commissioner.** "Commissioner" means the Commissioner
of Labor.

46 **Sec. 16. 32 MRSA §14052**, as enacted by PL 1991, c. 468, §4,
48 is amended to read:

50 **§14052. Registration required**

2 An employee leasing company may not engage in business from
3 offices in this State or enter into any contractual relationship
4 with a client company for the purpose of providing employees for
5 business conducted by the client company in this State unless the
6 employee leasing company is registered under this chapter. An
7 employee leasing company or person may not use the name or title
8 "staff leasing company," "employee leasing company," "registered
9 staff leasing company," or "staff leasing services company" or
10 otherwise represent that it is registered under this chapter
11 unless the entity or person is registered under this chapter.

12 **Sec. 17. 32 MRSA §14053**, as enacted by PL 1991, c. 468, §4,
13 is amended to read:

14 **§14053. Registration process**

15 **1. Statement.** Except as otherwise provided in this
16 section, each employee leasing company required to be registered
17 under section 14052 shall provide the superintendent commissioner
18 with information required by the superintendent commissioner on
19 forms that the superintendent commissioner specifies. At a
20 minimum, employee leasing companies shall provide the following
21 information:
22

23 A. The name or names under which the registrant conducts
24 business;

25 B. The address of the principal place of business of the
26 employee leasing company and the address of each office it
27 maintains in this State;

28 C. The employee leasing company's taxpayer or employer
29 identification number;

30 D. A list by jurisdiction of each name under which the
31 employee leasing company has operated in the preceding 5
32 years, including any alternative names, names of
33 predecessors and, if known, successor business entities;

34 E. A list of all persons or entities that own a 5% or
35 greater interest in the employee leasing company at the time
36 of application and a list of persons who formerly owned a 5%
37 or greater interest in the employee leasing company, or its
38 predecessors in the preceding 5 years; and

39 F. A list of the cancellations or nonrenewals of workers'
40 compensation insurance issued to the employee leasing
41 company or its predecessors in the preceding 5 years. The
42 list must include the policy or certificate numbers, names
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2 of insurers or other providers of coverage, dates of
3 cancellation and reasons for cancellation. If coverage has
4 not been canceled or has been renewed, the registration must
5 include a sworn affidavit signed by the chief executive
6 officer of the employee leasing company attesting to that
7 fact.

8 **2. Renewal.** Prior to January 31st of each year or any
9 other time fixed by the superintendent commissioner, each
10 registrant shall renew its registration by notifying the
11 superintendent commissioner of any changes in the information
12 previously provided pursuant to this section.

13 **3. List.** The superintendent commissioner shall maintain a
14 list of employee leasing companies registered under this chapter.

15 **4. Forms.** The superintendent commissioner may prescribe
16 forms necessary to promote the efficient administration of this
17 section.

18 ~~5. Existing companies. Any employee leasing company doing
19 business in this State prior to the effective date of this
20 section shall register with the superintendent within 30 days of
21 the effective date of this section.~~

22 **Sec. 18. 32 MRSA §14055, sub-§1, ¶A,** as enacted by PL 1991, c.
23 468, §4, is repealed and the following enacted in its place:

24 A. A registered employee leasing company qualifies as an
25 "other group" within the meaning of Title 24-A, sections
26 2612-A and 2808 for purposes of procurement of group life
27 and health insurance with respect to employees leased to a
28 client company. A registered employee leasing company
29 qualifies as an eligible group within the meaning of Title
30 24-A, section 2884 for purchase of group legal services
31 insurance. Any employee welfare plan or benefit, other than
32 workers' compensation insurance, provided to employees
33 leased to a client company on less than a fully insured
34 basis may be provided only subject to and in accordance with
35 Title 24-A, chapter 81.

36 **Sec. 19. 32 MRSA §14055, sub-§5,** as enacted by PL 1991, c.
37 468, §4, is amended to read:

38 **5. Disclosure.** The employee leasing company shall disclose
39 to client companies services to be rendered, including costs, and
40 the respective rights and obligations of the parties prior to
41 entering into or receiving a leasing arrangement. This
42 disclosure must include a statement that the client company may
43 take complaints to the Bureau of Insurance Department of Labor.

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

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STATEMENT OF FACT

8 This bill prohibits an employee leasing company from
offering health benefits on a self-insured basis without meeting
10 the funding and reporting requirements that currently apply to
other forms of multiple-employer welfare arrangements. It also
12 requires that if a multiple-employer welfare arrangement is
terminated, prior written notice must be provided to the affected
14 employees. Similar notice is currently required prior to
termination of other group insurance plans. The bill strengthens
16 the regulation of multiple employer welfare arrangements by
requiring arrangements to obtain fidelity bonds and by clarifying
18 the standards applicable to the annual certifications of balance
sheets and statements of operations of multiple employer welfare
20 arrangements prepared by certified public accountants.

22 The bill also transfers the responsibility for registering
employee leasing companies from the Bureau of Insurance to the
24 Commissioner of Labor. In addition, the Commissioner of Labor is
directed to work with various state officials to develop material
26 that will assist a new business or small employer that is
considering using an employee leasing company. This material is
28 designed to help the employer ask the right questions in order to
minimize the financial risk to the business and the employees.