

# MAINE STATE LEGISLATURE

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# 125th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2011

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Legislative Document

No. 1285

H.P. 944

House of Representatives, March 23, 2011

### **An Act To Amend the Assessment Process and Funding of the Maine Workers' Compensation Board**

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Reference to the Committee on Labor, Commerce, Research and Economic Development suggested and ordered printed.

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST  
Clerk

Presented by Representative PRESCOTT of Topsham.  
Cosponsored by Representatives: BURNS of Whiting, CUSHING of Hampden, DOW of  
Waldoboro, HAMPER of Oxford, WINTLE of Garland.

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

2 **Sec. 1. 39-A MRSA §154**, as amended by PL 2009, c. 109, §1 and affected by §2,  
3 is further amended to read:

4 **§154. Assessment on workers' compensation insurers and self-insured employers**

5 ~~The Workers' Compensation Board Administrative Fund is established to accomplish~~  
6 ~~the purposes of this Act. An assessment must be levied on workers' compensation~~  
7 ~~insurers and self-insured employers in accordance with this section. All income~~  
8 ~~generated pursuant to this section must be recorded on the books of the State in a separate~~  
9 ~~account and deposited with the Treasurer of State and be credited to the Workers'~~  
10 ~~Compensation Board Administrative Fund paid to the Bureau of Insurance for deposit by~~  
11 ~~the bureau to the General Fund.~~

12 ~~**1. Use of fund.** All money credited to the Workers' Compensation Board~~  
13 ~~Administrative Fund must be used to support the activities of the board and for no other~~  
14 ~~purpose. Any balance remaining continues from year to year as a fund available for the~~  
15 ~~purposes set out in this section and for no other purpose.~~

16 ~~**2. Expenditures.** Expenditures from the Workers' Compensation Board~~  
17 ~~Administrative Fund are subject to legislative approval and allocation in the same manner~~  
18 ~~as appropriations are made from the General Fund. The joint standing committee of the~~  
19 ~~Legislature having jurisdiction over appropriations and financial affairs shall approve the~~  
20 ~~allocation.~~

21 **3. Assessment on workers' compensation insurance.** The following provisions  
22 apply regarding the ~~Workers' Compensation Board~~ assessment on workers' compensation  
23 insurance.

24 A. Every insurance company or association that writes workers' compensation  
25 insurance in the State and that does business or collects premiums or assessments in  
26 the State, including newly licensed insurance companies and associations, shall pay  
27 ~~to the board the an assessment determined pursuant to this section for the purpose of~~  
28 ~~providing partial support and maintenance of the board.~~

29 B. The assessment must be stated as a percentage of each employer's premium base.  
30 ~~In determining the assessment percentage, consideration must be given to the balance~~  
31 ~~in the Workers' Compensation Board Administrative Fund.~~

32 B-1. An employer's premium base for assessment purposes is defined as payroll  
33 times the filed manual rate applicable to the employer times the employer's current  
34 experience modification factor, if applicable. The calculation may not include any  
35 deductible credit, other than credits for the \$1,000 and \$5,000 indemnity deductibles  
36 and the \$250 and \$500 medical deductibles established pursuant to Title 24-A,  
37 sections 2385 and 2385-A. For policies written using retrospective rating, the  
38 premium base must be calculated in accordance with this paragraph regardless of the  
39 actual retrospective premium calculation.

1 The employer's premium base is subject to the final audit requirements of the Bureau  
2 of Insurance Rule, Chapter 470. If the audit results in a change in premium base, the  
3 amount of the assessment must be adjusted accordingly.

4 C. For each fiscal year, the initial assessment percentage must be determined by the  
5 ~~board~~ Superintendent of Insurance by May 1st of the prior fiscal year. Insurance  
6 companies or associations must begin collecting the initial assessment from all  
7 employers on July 1st of each year. In establishing the assessment percentage, the  
8 ~~board~~ Superintendent of Insurance shall estimate the expected premium base for the  
9 upcoming fiscal year based on the returns filed under paragraph D and anticipated  
10 trends in the insurance marketplace. ~~The board shall consult with the Bureau of~~  
11 ~~Insurance and other knowledgeable sources to help determine the trends.~~ The board  
12 Superintendent of Insurance may adjust the assessment percentage at any time to  
13 secure collection on an annual basis of the assessment amount established in  
14 subsection 6, but shall provide written notice to the affected companies and  
15 associations at least 45 days prior to the effective date of the adjustment. ~~The board~~  
16 ~~may not adjust the assessment percentage more than 3 times in a fiscal year.~~ The  
17 adjusted assessment percentage must be applied prospectively on policies with an  
18 effective date on or after the effective date of the adjustment.

19 D. Every insurance company or association subject to the assessment imposed by  
20 this section with an estimated annual payment of \$50,000 or more based on previous  
21 assessment returns may make payments quarterly. Each insurance company or  
22 association electing quarterly payments must on or before the last day of each  
23 January, each April, the 25th day of each June and the last day of each October file  
24 with the ~~board on forms prescribed by the board~~ Superintendent of Insurance a return  
25 for the quarter ending the last day of the preceding month, except the month of June,  
26 which is for the quarter ending June 30th and remit payment of the assessment based  
27 upon the results for the quarter reported. A final reconciled annual return must be  
28 filed on or before September 15th covering the prior fiscal year in which the previous  
29 assessment was levied. The final return must be certified by the company's or  
30 association's chief financial officer. Insurance companies or associations with an  
31 annual assessment estimate of under \$50,000 shall pay the assessment on or before  
32 June 1st and shall also file a quarterly and an annual return ~~on forms prescribed by~~  
33 ~~the board~~. Affiliated insurers may aggregate their collection volume in order to meet  
34 the \$50,000 assessment threshold as long as the affiliation is consistent with the  
35 standards defined in Title 24-A, section 222. Those qualifying insurance companies  
36 or associations that opt to consolidate their quarterly payments and reports may do so  
37 only if each individually licensed company or association is individually reported  
38 within each consolidated return.

39 **4. Assessment on self-insured employers.** Every self-insured employer approved  
40 pursuant to section 403 shall, ~~for the purpose of providing partial support and~~  
41 ~~maintenance of the board~~, pay an assessment on aggregate benefits paid by each member  
42 pursuant to section 404, subsection 4. This assessment must be a dollar amount.

43 **5. Amounts of premiums and losses; distribution of assessment.** The Bureau of  
44 Insurance shall ~~provide to the board~~ publish the amounts of gross direct workers'  
45 compensation premiums written by each insurance carrier and the amounts of aggregate

1 benefits paid by each self-insurer and group self-insurer on or before April 1st of each  
2 year. Beginning with the assessment for the fiscal year beginning July 1, 1995 and  
3 thereafter, the total assessment must be distributed between insurance companies or  
4 associations and self-insured employers in direct proportion to the pro rata share of  
5 disabling cases attributable to each group for the most recent calendar year for which data  
6 is available. This distribution of the assessment must be determined on a basis consistent  
7 with the information reported by the Department of Labor, Bureau of Labor Standards,  
8 Research and Statistics Division in its annual Characteristics of Work-Related Injuries  
9 and Illnesses in Maine publication, provided that any segment of the market identified as  
10 "not-insured" be excluded from the calculation of proportionate shares. In consultation  
11 with the Director of Labor Standards, the ~~board~~ Superintendent of Insurance shall  
12 determine a date prior to the required assessment to establish the distribution.

13 **6. Assessment.** Assessments levied under this section are subject to the following.

14 A. The assessments levied under this section may not be designed to produce more  
15 than \$10,000,000 ~~beginning in the 2008-09 fiscal year, more than \$10,400,000~~  
16 ~~beginning in the 2009-10 fiscal year, more than \$10,800,000 beginning in the 2010-~~  
17 ~~11 fiscal year or more than \$11,200,000 beginning in the 2011-12~~ any fiscal year.  
18 Assessments collected that exceed the applicable limit by a margin of more than 10%  
19 must be used to reduce the assessment that is paid by insured employers pursuant to  
20 subsection 3 in the following fiscal year. ~~Any amount collected above the board's~~  
21 ~~allocated budget and within the 10% margin must be used to create a reserve of up to~~  
22 ~~1/4 of the board's annual budget.~~

23 ~~B. The board, by a majority vote of its membership, may use its reserve to assist in~~  
24 ~~funding its Personal Services account expenditures and All Other account~~  
25 ~~expenditures and to help defray the costs incurred by the board pursuant to this Act~~  
26 ~~including administrative expenses, consulting fees and all other reasonable costs~~  
27 ~~incurred to administer this Act. The board shall notify the chairs and members of the~~  
28 ~~joint standing committee of the Legislature having jurisdiction over labor matters~~  
29 ~~whenever the board receives approval from the State Budget Officer and the~~  
30 ~~Governor to use reserve funds to increase its allotment above the allocation~~  
31 ~~authorized by the Legislature. Any collected amounts or savings above the allowed~~  
32 ~~reserve must be used to reduce the assessment for the following fiscal year.~~

33 ~~C. The board shall determine the assessments prior to May 1st annually and shall~~  
34 ~~assess each insurance company or association and self-insured employer its pro rata~~  
35 ~~share for expenditures during the fiscal year beginning the immediately following~~  
36 ~~July 1st. Each self-insured employer shall pay the assessment on or before the~~  
37 ~~immediately following June 1st. Each insurance company or association shall pay the~~  
38 ~~assessment in accordance with subsection 3.~~

39 **7. Insurance company or association collections.** Insurance companies or  
40 associations shall bill and collect assessments under this section on insured employers.  
41 The assessments must be separately stated amounts on all premium notices and may not  
42 be reported as premiums for any tax or regulatory purpose or for the purpose of any other  
43 law. ~~All collected payments must be submitted to the board with the next quarterly~~  
44 ~~payment. The Bureau of Insurance shall report to the board all newly authorized workers'~~

1 ~~compensation carriers in order to facilitate notification to the new carrier of its~~  
2 ~~obligations under this section.~~

3 **8. Violations.** Any insurance company, association or self-insured employer subject  
4 to this section that willfully fails to pay an assessment in accordance with this section  
5 commits a civil violation ~~for which a forfeiture of not more than \$500 may be adjudged~~  
6 ~~for each day following the due date for which payment is not made~~ under Title 24-A,  
7 section 12-A.

8 **8-A. General Fund request.** The Workers' Compensation Board shall submit its  
9 proposed budget to the Commissioner of Administrative and Financial Services for  
10 inclusion in the General Fund appropriation bill provided for in Title 5, section 1581.

11 ~~**9. Deposit of funds; investment.** All revenues derived from assessments levied~~  
12 ~~against insurance companies, associations and self-insured employers described in this~~  
13 ~~section must be reported and paid to the Treasurer of State and credited to the Workers'~~  
14 ~~Compensation Board Administrative Fund. The Treasurer of State may invest the funds~~  
15 ~~in accordance with state law. All interest must be paid to the fund.~~

16 ~~**10. Deposit of funds in Workers' Compensation Board Administrative Fund.**~~  
17 ~~The Treasurer of State shall deposit in the Workers' Compensation Board Administrative~~  
18 ~~Fund funds collected pursuant to section 152, subsection 14.~~

19 ~~**12. Audit.** In consultation with the Bureau of Insurance, the board may audit all~~  
20 ~~returns and investigate any issues relevant to the collection and payment of any~~  
21 ~~assessment under this section.~~

22 **Sec. 2. 39-A MRSA §324, sub-§2, ¶A,** as amended by PL 2007, c. 265, §1, is  
23 further amended to read:

24 A. Except as otherwise provided by section 205, if an employer or insurance carrier  
25 fails to pay compensation as provided in this section, the board may assess against the  
26 employer or insurance carrier a fine of up to \$200 for each day of noncompliance. If  
27 the board finds that the employer or insurance carrier was prevented from complying  
28 with this section because of circumstances beyond its control, a fine may not be  
29 assessed.

30 (1) The fine for each day of noncompliance must be divided as follows: Of each  
31 day's fine amount, the first \$50 is paid to the employee to whom compensation is  
32 due and the remainder must be ~~paid to the board and be credited to the Workers'~~  
33 ~~Compensation Board Administrative Fund~~ submitted to the Treasurer of State for  
34 deposit into the General Fund.

35 (2) If a fine is assessed against any employer or insurance carrier under this  
36 subsection on petition by an employee, the employer or insurance carrier shall  
37 pay reasonable costs and attorney's fees related to the fine, as determined by the  
38 board, to the employee.

39 (3) Fines assessed under this subsection may be enforced by the Superior Court  
40 in the same manner as provided in section 323.

