

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND THIRTEENTH LEGISLATURE
FIRST REGULAR SESSION

December 3, 1986 to June 30, 1987

Chapters 1-542

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

Twin City Printery
Lewiston, Maine
1987

PUBLIC LAWS

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used by the service member before entitlement to medical care benefits under Title 39. Military schools are fully creditable under Title 39 in an approved plan of rehabilitation; and

(2) Title 39 benefits are based on inability to perform the usual civilian occupation;

D. For the purpose of calculation of compensation, average weekly wage shall be computed solely on the earning capacity of the injured member in the civilian occupation in which he is regularly engaged. In case of death, dependents shall be entitled to compensation as provided in Title 39 and any amendments to that Title;

E. If the member remains in a federal pay status or continues to receive pay in accordance with section 143, the member's medical care shall be through the military or Veterans' Administration unless referred to civilian care. If, the member is eligible for military or Veterans' Administration care and knowingly declines or through his actions forfeits his rights to the benefits of section 143 or to federal care benefits, this declination or conduct serves to waive his rights to seek compensation for civilian care under Title 39;

G. For the purpose of Title 39, section 62, all federal benefits received by the member as a result of an injury, disability or disease shall be considered to be derived from the employer and shall constitute a setoff to compensation awarded as a result of this section. A dollar-for-dollar setoff is authorized for all federal benefits to include continuation of pay under section 143, continuation of federal pay and allowances, incapacitation pay, severance pay, disability retirement pay, Veterans' Administration disability payments and military and Veterans' Administration death benefits; and

G. Reporting under the early pay provisions of Title 39 do not have to be initiated until a final decision is reached on the injured service member's entitlement to federal benefits or while military or veterans' disability benefits are received in lieu of compensation under Title 39, whichever ceases first. Veterans' disability benefits provided in this subsection include state military duty pay received under section 143, federal continuation pay, or incapacitation pay in lieu of Title 39 benefits. The time provisions of Title 39 are effective upon notification to the service member that federal benefits are not authorized, or the gross monetary federal benefits are determined to be less than the entitlements under the provisions of Title 39 without taking into account the setoff prescribed in paragraph E.

Effective September 29, 1987.

CHAPTER 272

H.P. 1123 — L.D. 1526

AN ACT to Define Reference to "Standard Premium" in the Workers' Compensation Self-insurance Laws.

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

Sec. 1. 39 MRSA §23, sub-§6, ¶A, as enacted by PL 1981, c. 484, §7, is amended to read:

A. The bond or security deposit required of an individual self-insurer shall not be less than the greater of an amount determined by the following formula or \$50,000. The bond or security deposit shall be the greater of an amount equal to the loss and loss adjustment expense portion of the annual standard premium for the prospective fiscal coverage period or outstanding loss reserves minus recoveries from all excess carriers and subrogation reduced to net collections plus 25% of annual standard premiums for the prospective fiscal coverage period. The percentage factor used to determine the portion of standard annual standard premium allocated for loss and loss adjustment expenses shall be acceptable to the superintendent. For the purposes of this paragraph, "annual standard premium" means the annual premium produced by applying the manual rates, rating rules, excluding any premium discount, and the experience rating procedure approved by the Superintendent of Insurance for the Safety Pool of the residual market mechanism, as described in Title 24-A, section 2350, to the exposure and experience of the individual self-insurer.

For individual self-insurers who have a net worth equal to or in excess of \$10,000,000; who have had positive net earnings demonstrated by certified statements of financial condition in at least 3 of the 5 latest fiscal years, including therein one of the 2 most recent years; and whose mean annual earnings for the 5 latest fiscal years are at least equal to the normal annual premium for the prospective fiscal coverage period, the minimum security deposit or bond shall be an amount determined by the formula above or as hereinafter adjusted for applicable levels of working capital funds.

An employer meeting the above test may deduct from the penal value of its surety bond or from market value of securities deposited, an amount not exceeding demonstrated working capital in such current statement of financial condition; the bond or deposit shall not be less than \$100,000.

For those self-insurers unable to meet the foregoing standards, the security deposit shall be governed by this subsection. Self-insurers failing these tests shall deposit acceptable funds or a surety bond in that amount produced by the formula to be written by a

corporate surety which meets the qualifications prescribed by regulations of the superintendent.

Within 30 days after notice by the Superintendent of Insurance, the self-insurer shall post the deposit indicated. This deadline may be extended by the superintendent for good cause, but in no event may exceed one year from the deadline for compliance as stated in the notice given to the self-insurer.

A bond or security deposit in excess of the amount prescribed by this subsection may be required if the superintendent determines that the self-insurer has experienced a deterioration in financial condition which adversely affects the self-insurer's ability to pay expected losses.

No judgment creditor other than claimants for benefits under this Act may have a right to levy upon the self-insurer's assets held in such deposit.

Sec. 2. 39 MRSA §23-A, sub-§4, ¶A, as amended by PL 1985, c. 371, §3, is further amended to read:

A. The association shall:

(1) Obtain from each member and file with the superintendent individual reports specifying the aggregate benefits each member paid during the previous calendar year, and the annual standard premium which would have been paid by each self-insurer during the previous calendar year ~~pursuant to manual rates established by the principal rating organization in the State and using the experience rating procedure approved by the Superintendent of Insurance for that self-insurer.~~ These reports shall be due on or before July 15th following the close of that calendar year, except that this deadline may be extended by the superintendent for up to 3 additional months for good cause shown;

(2) Assess each member of the association as follows:

(a) Each individual self-insurer shall be annually assessed an amount equal to 1% of the annual standard premium which would have been paid by that individual self-insurer during the prior calendar year; payment to the association shall be made no later than September 15th following the close of that calendar year. Where any such assessment is paid based in whole or in part upon estimates of annual standard premium for the prior calendar year, there shall be made in the next year's assessment an adjustment of the assessment of such prior year based on actual audited annual standard premium. Regardless of the size of the fund referred to in subparagraph (3), during its first 12 months of membership, no individual self-insurer may discount or reduce this 1% assessment;

(b) Each group self-insurer shall be annually assessed an amount equal to .1% of the total annual standard premium which would have been paid by all the members of that group self-insurer during the prior calendar year; payment to the association shall be no later than September 15th following the close of that calendar year. Where any such assessment is paid based in whole or in part upon estimates of annual standard premium for the prior calendar year, there shall be made in the next year's assessment an adjustment of the assessment of such prior year based on actual audited annual standard premium. Regardless of the size of the fund referred to in subparagraph (3), during its first 12 months of membership, no group self-insurer may discount or reduce this .1% assessment;

(c) Each member self-insurer shall be notified of the assessment no later than 30 days before it is due;

(d) If a self-insurer is a member of the association for less than a full calendar year, the annual standard premium shall be adjusted by that portion of the year the self-insurer is not a member of the association; and

(e) If application of the contribution rates referred to in divisions (a) and (b) would produce an amount in excess of the limits of the fund established in subparagraph (3) an equitable proration shall be made;

(3) Administer a fund, to be known as the Maine Self-Insurance Guarantee Fund, which shall receive the assessments required in subparagraph (2). This fund shall not exceed \$1,000,000, except that once the fund reaches \$1,000,000, the fund shall not exceed \$1,000,000 plus all subsequent initial assessments of new member self-insurers which are required to be made in subparagraph (2), divisions (a) and (b). The costs of administration by the association shall be borne by the fund, and the association is authorized to secure reinsurance and bonds and to otherwise invest the assets of the fund to effectuate the purpose of the association, subject to the approval of the Superintendent of Insurance.

(a) The association may purchase primary excess insurance from an insurer licensed in this State for the appropriate lines of authority to defray its exposure to loss occasioned by the default of one or more of its members. Any excess insurance so purchased shall be limited to coverage of post-assessment liability of the association's members and the association shall fund any such purchase by levying a special assessment on its members for this purpose or by application of any unencumbered funds available but which have not been raised by imposition of any preassessment or post-assessment. The association may obtain from

each member any information it may reasonably require in order to facilitate the securing of this primary excess insurance. The association shall establish reasonable safeguards designed to ensure that information so received is used only for this purpose and is not otherwise disclosed;

(4) Be obligated to the extent of covered claims occurring prior to the determination of the self-insurer's insolvency, or occurring after such determination but prior to the obtaining of workers' compensation insurance as otherwise required under this Title by the self-insurer. Nothing in this section shall obligate the association to pay claims against a self-insurer which are not or have not been paid as a result of a determination of insolvency or the institution of bankruptcy or receivership proceedings which occurred prior to the effective date of this section.

(a) "Covered claim" means an unpaid claim against an insolvent self-insurer which relates to an injury which occurs while the self-insurer is a member of the association and which is compensable under this Act;

(5) After paying any claim resulting from a self-insurer's insolvency, the association shall be subrogated to the rights of the injured employee and dependents and shall be entitled to enforce liability against the self-insurer by any appropriate action brought in its own name or in the name of the injured employee and dependents;

(6) Assess the fund in an amount necessary to pay:

(a) The obligations for the association under this section subsequent to an insolvency;

(b) The expenses of handling covered claims subsequent to an insolvency;

(c) The costs of examinations under subsection 8; and

(d) Other expenses authorized by this chapter;

(7) Investigate claims brought against the association and adjust, compromise, settle and pay covered claims to the extent of the association's obligation and deny all other claims. The association may review settlements to which the insolvent self-insurer was a party to determine the extent to which such settlements may be properly contested;

(8) Notify such persons as the superintendent directs under subsection 7;

(9) Handle claims through its employees or through one or more self-insurers or other persons designated as servicing facilities. Designation of a servicing

facility is subject to the approval of the superintendent, but designation of a member self-insurer as a servicing facility may be declined by such self-insurer;

(10) Reimburse each servicing facility for obligations of the association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the association; and

(11) Pay the other expenses of the association authorized by this section.

(a) Establish in the plan of operation a mechanism to calculate the assessments required by subparagraphs (1), (2) and (3) by a simple and equitable means to convert from policy or fund years which are different from a calendar year.

Sec. 3. 39 MRSA §23-A, sub-§4, ¶¶E and F are enacted to read:

E. For the purposes of this subsection, "annual standard premium for an individual self-insurer" means the annual premium produced by applying the manual rates, rating rules, excluding any premium discount, and experience rating procedure approved by the Superintendent of Insurance for the Safety Pool of the residual market mechanism described in Title 24-A, section 2350, to the exposure and experience of the individual self-insurer.

F. For the purposes of this subsection, "annual standard premium for a group self-insurer" means the total annual premium that would have been paid by all members of that group using the manual rates, rating rules, excluding any premium discount, and experience rating procedure approved by the Superintendent of Insurance for that self-insurer.

Effective September 29, 1987.

CHAPTER 273

H.P. 1165 — L.D. 1591

AN ACT to Amend the Maine Emergency Medical Services Act of 1982.

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

Sec. 1. 32 MRSA §83, sub-§16, as enacted by PL 1981, c. 661, §2, is amended to read:

16. Licensed ambulance attendant. "Licensed ambulance attendant" means a basic emergency medical person who has completed the minimum training specified in section 85, ~~subsection 2~~ subsection 3 and has met the other conditions specified in regulations under this chapter for licensure at this level.