

# MAINE STATE LEGISLATURE

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**LAWS**  
OF THE  
**STATE OF MAINE**

AS PASSED BY THE  
ONE HUNDRED AND FOURTEENTH LEGISLATURE  
**FIRST SPECIAL SESSION**

August 21, 1989 to August 22, 1989

and

**SECOND REGULAR SESSION**

January 3, 1990 to April 14, 1990

THE GENERAL EFFECTIVE DATE FOR  
NON-EMERGENCY LAWS IS  
July 14, 1990

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

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J.S. McCarthy Company  
Augusta, Maine  
1990

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**PUBLIC LAWS**  
**OF THE**  
**STATE OF MAINE**

**AS PASSED AT THE**  
**SECOND REGULAR SESSION**

**of the**  
**ONE HUNDRED AND FOURTEENTH LEGISLATURE**

**January 3, 1990 to April 14, 1990**

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5. Certification; inspection. The builder of a facility to which this section applies shall obtain a certification from a design professional that the plans of the facility meet the standards of construction required by this section. Prior to commencing construction of the facility, the builder shall submit the certification to:

A. The municipal authority that reviews plans in the municipality where the facility is to be constructed; or

B. If the municipality where the facility is to be constructed has no authority who reviews plans, the municipal officers of the municipality.

If municipal officials of the municipality where the facility is to be constructed inspect buildings for compliance with construction standards, that inspection must include an inspection for compliance with the standards required by this section. The municipal officials shall require the facility inspected to meet the construction standards of this section before the municipal officials permit the facility to be occupied.

See title page for effective date.

**CHAPTER 780**

**H.P. 1565 - L.D. 2171**

**An Act to Amend the Workers' Compensation Insurance Laws**

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

Whereas, under the "fresh start" provision of the workers' compensation reform law enacted in 1987, the Superintendent of Insurance is required to determine annually, beginning in 1990, whether the premiums in the residual workers' compensation market were greater or less than the losses and expenses in the market, and to surcharge or credit employers in the State as a result of the determination; and

Whereas, the hearings to make this determination for the first time have already begun; and

Whereas, this legislation amends the laws relating to those proceedings; and

Whereas, the Legislature intends these changes to apply to the 1990 determinations; and

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

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

**Sec. 1. 24-A MRSA §2366, sub-§4, ¶B,** as enacted by PL 1987, c. 559, Pt. A, §4, is repealed and the following enacted in its place:

B. The plan provides for premium surcharges for employers in the Accident Prevention Account based on their specific loss experience within a specified period or other factors which are reasonably related to their risk of loss.

(1) No premium surcharge may be applied to a risk whose threshold loss ratio is less than 1.00. The threshold loss ratio is based on the ratio of "L" to "P" where:

(a) "L" is the actual incurred losses of a risk during the previous 3-year experience period as reported, except that the largest single loss during the 3-year period is limited to the amount of premium charged for the year in which the loss occurred; and

(b) "P" is the premium charged to a risk during that 3-year period.

(2) Premium surcharges apply to a premium that is experience or merit rating modified.

(3) Premium surcharges are based on an insured's adverse deviation from expected incurred losses in this State. The surcharge is based on the ratio of "A" to "B" where:

(a) "A" is the actual incurred losses of a risk during the previous 3-year experience period as reported; and

(b) "B" is the expected incurred losses of a risk during that period as calculated under the uniform experience or merit rating plan multiplied by the risk's current experience or merit rating modification factor.

(4) The premium surcharge is as follows:

<u>Ratio of "A" to "B"</u>	<u>Surcharge</u>
<u>Less than 1.20</u>	<u>None</u>
<u>1.20 or greater, but less than 1.30</u>	<u>5%</u>
<u>1.30 or greater, but less than 1.40</u>	<u>10%</u>
<u>1.40 or greater, but less than 1.50</u>	<u>15%</u>
<u>1.50 or greater</u>	<u>20%</u>

**Sec. 2. 24-A MRSA §2366, sub-§6**, as enacted by PL 1987, c. 559, Pt. A, §4, is amended to read:

**6. Mandatory deductible.** A deductible ~~shall apply~~ applies to all workers' compensation insurance policies issued to employers in the Accident Prevention Account ~~which that~~ that meet the following qualifications:

A. A net annual premium of ~~\$12,000~~ \$20,000 or more subject to adjustment pursuant to this section in this State; ~~and~~

B. A premium not subject to retrospective rating; and

C. The employer's threshold loss ratio, as determined under subsection 4, paragraph B, subparagraph (1), is 1.00 or greater.

The deductible ~~shall be~~ is \$1,000 a claim but ~~shall apply~~ applies only to wage loss benefits paid on injuries occurring during the policy year. In no event may the sum of all deductibles in one policy year exceed the lesser of 15% of net annual premium or \$25,000. Each loss to which a deductible applies ~~shall must~~ must be paid in full by the insurer. After the policy year has expired, the ~~insurer employer~~ insurer shall ~~be reimbursed by~~ reimburse the ~~insurer the~~ insurer amount of the deductibles ~~by the employer~~. This reimbursement ~~shall must~~ must be considered as premium for purposes of cancellation or nonrenewal.

For purposes of calculations required under this section, losses ~~shall must~~ must be evaluated 60 days from the close of the policy year.

~~The superintendent shall report to the joint standing committee of the Legislature having jurisdiction over insurance by January 30, 1989, regarding the appropriateness of the initial premium level set in paragraph A.~~

~~After any adjustment of the premium level in 1989 in response to the superintendent's report, the superintendent may adjust the premium level through rulemaking if inflationary factors or rate increases warrant any changes.~~

Beginning July 1, 1991, the superintendent shall, by rule, annually adjust the \$20,000 premium level established in this subsection to reflect any change in rates for the Accident Prevention Account and any change in wage levels in the preceding calendar year. Changes in wage levels are determined by reference to changes in the state average weekly wage, as computed by the Department of Labor, Bureau of Employment Security. Any adjustment is rounded off to the nearest \$1,000 increment.

This subsection ~~shall take~~ takes effect on the effective date of the first approved rate filing after the effective date of this Act.

**Sec. 3. 24-A MRSA §2367, first ¶**, as amended by PL 1987, c. 716, §1, is further amended to read:

Beginning in 1990, the superintendent shall annually determine, ~~after hearing but on or before March 15th of each year,~~ whether premiums collected from risks in the residual market and investment income allocable to those premiums are greater or less than the incurred losses and expenses associated with that market. The superintendent shall hold a hearing before making the determination and issue the determination by the earlier of June 1st or the date of decision concerning any request for a rate change pending before the superintendent on January 1st of that year. In establishing surcharges under this section, the superintendent may approve application of surcharges to policies issued on or after January 1st, but prior to the date of the superintendent's order, provided that the policies contain language approved by the superintendent ~~which that~~ that is sufficient to notify policyholders that they may be subject to surcharges approved after the effective date of their policies. For purposes of this section, the residual market ~~shall be~~ is the Accident Prevention Account and the Safety Pool. For purposes of this section, "deficit" means the amount by which incurred losses and expenses associated with the residual market exceed premiums collected from risks in that market and investment income allocable to those premiums. The superintendent shall also determine whether insurers have in good faith made their best efforts to maximize the number of risks in the voluntary market for workers' compensation insurance in the State. The superintendent may make timely and appropriate requests for any data ~~deemed~~ determined necessary by the superintendent to make these determinations.

**Sec. 4. 24-A MRSA §2367, sub-§1**, as enacted by PL 1987, c. 559, Pt. A, §4, is amended to read:

**1. Premium surplus.** If the superintendent determines that premiums collected from the insureds in the residual market and investment income allocable to those premiums are greater than the incurred losses and expenses attributable to the risks in that market, the superintendent shall order an appropriate credit applied to the premiums paid by policyholders in the residual market and employers who were policyholders during the policy year for which the surplus was determined but who have since become self-insured.

**Sec. 5. 24-A MRSA §2367, sub-§2**, as amended by PL 1987, c. 716, §2, is further amended to read:

**2. Premium deficit.** Payment of any premium deficit ~~shall be~~ is determined in the following manner.

A. If the superintendent determines that premiums and investment income attributable to those premiums are less than incurred losses and expenses in the residual market, the superintendent shall then determine the rate of return for the insurance industry in the entire Maine workers' compensation market. If the rate of return is found, considering all relevant factors, to be less than reasonable, the superintendent shall order a surcharge on premiums paid by insureds in both the voluntary and involuntary markets and employers

who were in either market during the policy year for which the deficit was determined but who have since become self-insured.

B. Any deficit determined by the superintendent pursuant to paragraph A ~~shall~~ is not be the responsibility of the insurers on an individual or collective basis but ~~shall rather be~~ is the financial obligation of all insured employers in the State, including employers who were insured during the policy year for which the deficit has been determined but who have since become self-insured. The surcharge ~~shall~~ must be an amount at least to offset the adverse cash flows resultant from the deficiency, provided that the application of ~~such~~ the surcharge does not produce a rate of return in excess of a just and reasonable profit in the entire Maine workers' compensation market.

C. Beginning in 1991, the superintendent, after hearing and only if the rates in the entire workers' compensation market are inadequate to produce a reasonable rate of return, shall determine as of March 15th of each year whether insurers have in good faith made their best efforts to maximize the number of risks in the voluntary market. If the superintendent's determination is affirmative, the surcharge in paragraph A ~~shall be applied~~ applies.

If the determination is negative, then the superintendent shall determine the percentage of workers' compensation insurance, by premium volume, that has been written voluntarily statewide. If the premium volume in the voluntary market is greater than or equal to the amount specified in the table below, then the surcharge in paragraph A ~~shall be applied~~ applies.

Policy Year	Premium Volume
1989	50%
1990	60%
1991 and later	70%

~~If the superintendent determines that the percentage of premium in the voluntary market is less than the percentage in the table above, the deficit collectible from insured employers shall be reduced as follows: For each reduction of 5%, or part thereof, below the required percentage, the total deficit amount shall be reduced by 10% subject to a maximum reduction of 50% of the deficit.~~

If the superintendent determines that the percentage of premium in the voluntary market is less than the percentage in the table above, the deficit collectible from insured employers is reduced as follows: for each reduction of 5%, or part thereof, below the required percentage, the total deficit amount is reduced by 10% subject to a maximum reduction of 50% of the deficit.

**Sec. 6. 24-A MRSA §2367, sub-§3,** as enacted by PL 1987, c. 559, Pt. A, §4, is amended to read:

**3. Application of credit or surcharge.** Credits or surcharges ordered by the superintendent ~~shall~~ apply to policies issued or renewed during the calendar year after the order of the superintendent is issued or for such other period as the superintendent may order. In the case of an employer who was insured during the policy year for which the surplus or deficit has been determined but who is self-insured in the year in which the surcharge or credit is ordered, individually or as part of a group, the surcharge must be applied to the lowest of the:

A. Discounted standard premium applicable to the employer for the period during which the employer was insured in the policy year the deficit was created;

B. Manual premium applicable to the employer for the year prior to the year to which the surcharge is applied, multiplied by a fraction, the numerator of which is the number of days the employer was insured in the policy year the deficit was created and the denominator of which is 365; or

C. Discounted standard premium applicable to the employer for the year prior to the year to which the surcharge is applied, multiplied by a fraction, the numerator of which is the number of days the employer was insured in the policy year the deficit was created and the denominator of which is 365.

The superintendent shall adopt rules to determine the method of collecting any surcharge or paying any credit ordered with respect to self-insured employers subject to surcharge or credit.

**Sec. 7. 24-A MRSA §2367, sub-§6,** as enacted by PL 1987, c. 559, Pt. A, §4, is repealed.

**Sec. 8. 24-A MRSA §2367, sub-§7** is enacted to read:

**7. Exemption from 1990 surcharge.** Notwithstanding this section, employers who were policyholders during the policy year for which the deficit was determined but who are self-insured in 1990 are not subject to any surcharge ordered in 1990. This subsection does not exempt those employers from surcharges ordered after 1990 with respect to the deficit determined for the policy year beginning January 1, 1988.

**Sec. 9. Application; retroactivity.** Sections 1 and 2 of this Act apply only to workers' compensation insurance policies issued or renewed on or after the effective date of this Act. Section 3 of this Act is retroactive to March 15, 1990. Sections 4, 5, 6 and 8 of this Act are retroactive to November 20, 1987.

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

Effective April 3, 1990.