LAWS

OF THE

STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND SIXTEENTH LEGISLATURE

SECOND REGULAR SESSION

January 5, 1994 to April 14, 1994

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
JULY 14, 1994

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

J.S. McCarthy Company
Augusta, Maine
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ending the last day of the preceding month, except the month of June, which is for the quarter ending June 30th and remit payment of the assessment based upon the results for the quarter reported. A final reconciled annual return must be filed on or before September 15th covering the prior fiscal year in which the previous assessment was levied. Insurance companies or associations with an annual assessment of under $5,000 shall pay the assessment on or before June 1st.

Sec. 3. 39-A MRSA §154, sub-§§5 and 6, as amended by PL 1993, c. 145, §4, are further amended to read:

5. Amounts of premiums and losses; distribution of assessment. The Bureau of Insurance shall provide to the board the amounts of gross direct workers' compensation premiums written by each insurance carrier and the amounts of aggregate benefits paid by each self-insurer and group self-insurer on or before April 1st of each year. For the fiscal year beginning July 1, 1994, the total assessment must be distributed between insurance companies or associations and self-insured employers in direct proportion to the pro rata share of disabling cases attributable to each group for calendar year 1993. This distribution of the assessment must be determined on a basis consistent with the Five-Year Comparison, Disabling Cases, Number and Percent by Insurer Type, Maine, 1991-1992 reported by the Department of Labor, Bureau of Labor Standards, Research and Statistics Division in its October 1993 edition of Characteristics of Work-Related Injuries and Illnesses in Maine, 1992, provided that the segment of the market identified as "not-insured" must be excluded from the calculation of proportionate shares.

6. Assessment levied. The assessments levied under this section may not produce more than $6,000,000 in revenues annually beginning in the 1993-94 fiscal year. The board shall determine the assessments prior to May 1st and shall assess each insurance company or association and self-insured employer its pro rata share for expenditures during the fiscal year beginning July 1st. Each ~~insurance company or association and~~ self-insured employer shall pay the assessment on or before June 1st. Each insurance company or association shall pay the assessment in accordance with subsection 3.

Sec. 4. Equitable pro rata distribution of assessment. The Executive Director of the Workers' Compensation Board and the Superintendent of Insurance shall study methods of equitably distributing the costs of the Workers' Compensation Board assessment between insurance companies or associations and self-insured employers. The executive director and the superintendent shall make a recommendation, including any necessary legislation, on an equitable distribution method by January 15, 1995 to the joint standing committee of the Legislature having jurisdiction over labor matters.

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

Effective April 7, 1994.

CHAPTER 620

H.P. 1291 - L.D. 1739

An Act Regarding the Workers' Compensation Residual Market Mechanism

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

Whereas, the Superintendent of Insurance may commence an examination of fresh start deficits in the State's residual market for workers' compensation for past policy years early in 1993; and

Whereas, the Bureau of Insurance requires additional funds to effectively conduct such a proceeding; and

Whereas, these funds must be assessed promptly to be available for any fresh start proceeding commenced in the first 1/2 of 1994; 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 §2386-A, sub-§6, ¶B, as enacted by PL 1991, c. 885, Pt. B, §12 and affected by §13, is amended to read:

B. At the time the superintendent begins the proceeding required by this ~~subsection~~ section, the insurance carriers participating in the proceeding shall pay to the superintendent a fee of $20,000, which the superintendent shall immediately credit to the Public Advocate. The fee is to be segregated and expended for the purpose of employing outside consultants and paying other expenses, including staff salaries, to fulfill the

requirements of this subsection. Any portion of the fee not so expended is to be returned to the insurance carriers.

Sec. 2. Costs in the workers' compensation residual market mechanism 1992 proceeding before the Superintendent of Insurance. In any remand, reopening or other proceeding held after the effective date of this section by the Superintendent of Insurance in the 1992 proceeding pursuant to the Maine Revised Statutes, former Title 24-A, section 2367 or Title 24-A, section 2386-A, the advisory organization shall reimburse the superintendent for the reasonable fees and expenses of independent consultants retained by the superintendent pursuant to Title 24-A, section 208 up to a maximum of $50,000.

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

Effective April 7, 1994.

CHAPTER 621

H.P. 1328 - L.D. 1791

An Act to Prevent Damage Claims against the State Due to the Installation of Drinking Water Wells in Areas of Possible Hazardous Substances and Oil Pollution

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

Sec. 1. 38 MRSA §548, as amended by PL 1991, c. 817, §10, is further amended by adding at the end the following:

If a water supply well is installed after October 1, 1994 to serve a location that immediately before the well installation was served by a viable community public water system, and the well is or becomes contaminated with oil:

1. Delineated contaminated area. The commissioner or any person responsible for the discharge of the oil is not obligated by this subchapter to reimburse any person for the expense of treating or replacing the well if the well is installed in an area delineated by the department as contaminated as a result of the proximity of the area to:

A. A hazardous waste storage, treatment or disposal facility licensed by the department;

B. An uncontrolled hazardous substance site as defined in section 1362, subsection 3 and listed by the department;

C. An oil terminal facility as defined in section 542, subsection 7 licensed by the department;

D. A solid waste disposal facility as defined in section 1303-C, subsection 30 and licensed by the department; or

E. A closed or abandoned municipal solid waste landfill listed by the department; and

2. Areas not delineated. If the well is installed in an area other than one described in subsection 1, the obligation under this subchapter of the commissioner or any person responsible for the discharge of oil with regard to replacement or treatment of the well is limited to reimbursement of the expense of installing the well and its proper abandonment. The well owner is responsible in such a case for other expenses of replacing or treating the water supply well, including the cost of any pump or piping installed with the well.

For purposes of this section, "viable community public water system" means a community water system as defined in Title 22, section 2660-B that has not indicated an intent to imminently cease providing water to that location.

Sec. 2. 38 MRSA §551, sub-§2, ¶I, as enacted by PL 1991, c. 817, §11, is amended to read:

I. A 3rd-party damage claim for damages to real estate may not include the devaluation of the real estate associated with the loss of a water supply if the commissioner finds under section 548 that a public or private water supply is available and if that water supply best meets the criteria of that section and the property owner did not agree to be served by that public or private water supply. If a water supply well is installed after October 1, 1994 to serve a location that immediately before the well installation was served by a viable community public water system, and the well is or becomes contaminated with oil:

(1) A 3rd party may not recover damages under this subchapter for expenses incurred in treating or replacing the well if the well is installed in an area delineated as contaminated as provided in section 548, subsection 1; and

(2) A 3rd-party damage claim under this subchapter with regard to treatment or replacement of the well is limited to reimbursement of the expense of installing the well and its proper abandonment if the well is installed in any other area.