

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND THIRTY-FIRST LEGISLATURE

FIRST REGULAR SESSION
December 7, 2022 to March 30, 2023

FIRST SPECIAL SESSION
April 5, 2023 to July 26, 2023

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NONEMERGENCY LAWS IS
JUNE 29, 2023

THE GENERAL EFFECTIVE DATE FOR
FIRST SPECIAL SESSION
NONEMERGENCY LAWS IS
OCTOBER 25, 2023

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

Augusta, Maine
2023

G. Members of the joint standing committee of the Legislature having jurisdiction over state and local government matters.

5. Building maintenance or repair. Prior to any maintenance or repair of a state-owned building by a person employed by a state agency, the bureau shall review the building's records in the database established and maintained pursuant to subsection 3 or inventory the state-owned building if the state-owned building has not already been inventoried pursuant to subsection 2 and add the results of the inventory into the database established and maintained pursuant to subsection 3. If asbestos, lead, black mold, radon or other substances that may be harmful to human health are found in the state-owned building to be maintained or repaired by a person employed by a state agency, the bureau shall inform the person performing the maintenance or repair work and provide appropriate protective gear.

6. Monitoring, mitigation, abatement and remediation. To promote a safe and healthy environment in state-owned buildings, the bureau's division of safety and environmental services shall:

A. Provide statewide monitoring of state-owned buildings to continuously identify the presence of health hazards in state-owned buildings, including, but not limited to, asbestos, lead, black mold, radon and other substances that may be harmful to human health;

B. Conduct routine building inventories and testing as appropriate to discover and assess the presence of health hazards in state-owned buildings, including, but not limited to, asbestos, lead, black mold, radon and other substances that may be harmful to human health;

C. Identify any mitigation, abatement, remediation, containment and maintenance necessary to address and prevent potential health hazards in state-owned buildings, including, but not limited to, asbestos, lead, black mold, radon and other substances that may be harmful to human health; and

D. Work with state departments and state agencies to develop safety protocols and train state employees on safety protocols.

7. Biennial report. The department shall submit a report to the joint standing committee of the Legislature having jurisdiction over state and local government matters that describes the conditions of state-owned buildings and state-leased buildings and areas of concern by February 1st of every even-numbered year.

8. Rules. The department may adopt rules to implement this section. Rules adopted pursuant to this subsection are routine technical rules pursuant to chapter 375, subchapter 2-A.

Sec. 2. State House radon testing; report. By January 15, 2024, the Department of Administrative

and Financial Services, Bureau of General Services shall test the air quality in the State House for the presence of radon and shall submit a report with the results of the testing to the Legislative Council. The report must also include recommendations on mitigation measures to reduce exposure to harmful levels of radon by persons working in or visiting the State House.

See title page for effective date.

CHAPTER 393

H.P. 886 - L.D. 1372

An Act to Amend the Workers' Compensation Self-insurance Laws to Allow for the Use of Fronting Companies

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

Sec. 1. 39-A MRSA §403, sub-§4-B is enacted to read:

4-B. Group self-insurance reinsurance fronting arrangements. This subsection governs group self-insurance reinsurance fronting arrangements.

A. As used in this subsection, unless the context otherwise indicates, the following terms have the following meanings.

(1) "Fronting arrangement" means a situation in which a fronting company issues a policy for workers' compensation insurance to an employer member of a group self-insurer licensed under this Title and cedes all of the premium and exposure of the policy for out-of-state employees to the self-insured group.

(2) "Fronting company" means an entity that engages in a fronting arrangement. A fronting company may be owned by one or more group self-insurers or by a group self-insurance reinsurance account.

(3) "National Association of Insurance Commissioners" has the same meaning as in Title 24-A, section 15.

(4) "Superintendent" means the Superintendent of Insurance.

B. Beginning June 1, 2024 and until May 31, 2029, an employer member of a group self-insurer licensed under this Title may insure its employees through a fronting arrangement under the following conditions.

(1) The group self-insurer must:

(a) Be a member of a group self-insurance reinsurance account, and the assets of the

members of the group self-insurance reinsurance account must be available to satisfy the obligations of a fronting company if the assets of the group self-insurer are inadequate to cover the obligations of the fronting company;

(b) Ensure that the members of the group have a net worth of at least \$50,000,000 or an amount reasonably determined by the superintendent;

(c) Insure members of the group that employ employees who live or work in a state other than this State and that are subject to the workers' compensation laws of that state; and

(d) Provide that members of a group self-insurer are jointly and severally liable for the workers' compensation obligations of an employer member of a group self-insurer whose out-of-state employees are insured by a fronting company.

Any fronting arrangement must require the group self-insurer or group self-insurance reinsurance account to assume all responsibility for administration and claims handling for the fronting company. More than one group self-insurer may enter into a fronting arrangement with the same fronting company. The obligations of a fronting company ceded to a group self-insurer must be included in the actuarial analysis of the group and such other filings as the superintendent may require under this section.

(2) The fronting company must:

(a) Have capital in the amount of \$500,000 or an amount reasonably determined by the superintendent;

(b) Submit a plan of operation to the superintendent, establish a board of directors and establish bylaws and procedures by which all the powers and duties of the fronting company are performed, including, but not limited to, defining the date and conditions upon which the fronting company will commence coverage for claims. The plan of operation is subject to the review and approval of the superintendent based on the consideration, including, but not limited to, of:

(i) The financial accreditation standards of the National Association of Insurance Commissioners; and

(ii) Whether the fronting company has received demonstrated interest from a regulatory agency in another

jurisdiction to authorize the fronting company to provide workers' compensation insurance coverage in that jurisdiction;

(c) Provide a detailed explanation of each fronting arrangement, including the process by which all exposures are ceded to a group self-insurer;

(d) Be subject to examination and regulation by the superintendent. The board of directors of a fronting company under this subsection shall submit, within 120 days after the close of each fiscal year, an audited financial report, an actuarial report, an audited financial statement and other information the superintendent may require; and

(e) Operate in accordance with its plan of operation as long as no workers' compensation insurance coverage is issued or provided in another jurisdiction until the fronting company receives prior approval in another jurisdiction. If the superintendent determines that the fronting company is not operating in accordance with its plan of operation or that the operations of the fronting company are adversely impacting the Bureau of Insurance's compliance with financial accreditation standards of the National Association of Insurance Commissioners or other applicable laws or regulations, the superintendent may order the fronting company to commence a plan to cease operations.

C. The provisions of Title 24-A and rules adopted under that Title relating to the formation, review, approval and operation of a workers' compensation insurance company do not apply to a fronting company established under this subsection except to the extent that those provisions and rules are consistent with the requirements of this subsection and any rules adopted pursuant to paragraph D.

D. The superintendent shall adopt rules to implement this subsection. Rules adopted pursuant to this paragraph are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 2. 39-A MRSA §403, sub-§4-C is enacted to read:

4-C. Continuation of authority to administer and handle claims; group self-insurer; fronting arrangement. Beginning June 1, 2029, an employer member of a group self-insurer licensed under this Title may not insure its employees through a fronting arrangement, except that a group self-insurer or group self-insurance reinsurance account may continue to administer and handle claims for an employer member

through a fronting arrangement in place prior to June 1, 2029.

Sec. 3. Rulemaking. The Superintendent of Insurance shall provisionally adopt the rules required in the Maine Revised Statutes, Title 39-A, section 403, subsection 4-B, paragraph D no later than January 1, 2024.

See title page for effective date.

**CHAPTER 394
S.P. 635 - L.D. 1603**

**An Act to Implement the
Recommendations of the
Committee To Ensure
Constitutionally Adequate
Contact with Counsel**

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

PART A

Sec. A-1. 4 MRSA §1804, sub-§3, ¶N, as amended by PL 2021, c. 481, §3, is further amended to read:

N. Develop a procedure for approving requests by counsel for authorization to file a petition as described in section 1802, subsection 4, paragraph D; and

Sec. A-2. 4 MRSA §1804, sub-§3, ¶O, as amended by PL 2021, c. 481, §4, is amended to read:

O. Establish a system to audit financial requests and payments that includes the authority to recoup payments when necessary. The commission may summon persons and subpoena witnesses and compel their attendance, require production of evidence, administer oaths and examine any person under oath as part of an audit. Any summons or subpoena may be served by registered mail with return receipt. Subpoenas issued under this paragraph may be enforced by the Superior Court; and

Sec. A-3. 4 MRSA §1804, sub-§3, ¶P is enacted to read:

P. Develop and maintain a registry of names, telephone numbers and other contact information for attorneys who provide legal services to persons who are incarcerated. The commission shall on a weekly basis provide these names, telephone numbers and other contact information to all sheriffs' offices and to the Department of Corrections. On the Monday following transmission of the information, the sheriffs' offices and the Department of Corrections have constructive notice that communications to and from these attorneys by residents of jails and correctional facilities are subject to the

attorney-client privilege. The attorneys' names, telephone numbers and other contact information are confidential.

Sec. A-4. 5 MRSA §200-N is enacted to read:

§200-N. Confidential attorney-client communications

1. Policies. By January 1, 2024, the Attorney General shall adopt a written policy for the protection of confidential attorney-client communications by employees and agents of the Attorney General, which must include, at a minimum, processes to protect and ensure confidentiality of attorney-client communications and processes to be followed in the event that there is a breach of attorney-client confidentiality.

2. Training. By January 1, 2024, the Attorney General shall develop a training program for all state, county and municipal law enforcement officers and investigators who, as part of a criminal investigation, may inadvertently hear confidential attorney-client communications, which must include, at a minimum, practices and procedures for protecting and ensuring confidential attorney-client communications and practices and procedures to be followed in the event that there is a breach of attorney-client confidentiality.

Sec. A-5. 15 MRSA §714 is enacted to read:

§714. Intercepted attorney-client communications of jail and correctional facility residents

1. Intercepted attorney-client communications of jail and correctional facility residents. If the sender or the recipient of an intercepted oral communication or wire communication was, at the time the communication was made, a resident in either a jail or an adult or juvenile correctional facility administered by the Department of Corrections and the other party was an attorney and if the resident demonstrates that the jail or correctional facility had actual or constructive notice at the time the communication was made of the attorney's name and, if the communication involved the use of a telephone, the jail or correctional facility had actual or constructive notice at the time that the communication was made of the attorney's telephone number and the communication was made directly to or from that telephone number:

A. The contents of the intercepted oral communication or wire communication and the fact and circumstances of the communication are not admissible in a criminal proceeding, including a proceeding under chapter 305-A;

B. A person who viewed or listened to the intercepted communication and did not immediately discontinue viewing or listening to the communication as soon as the person had sufficient information to determine that the sender or the recipient of the communication was, at the time the commu-