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

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

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

§ 154. Assessment on workers' compensation insurers and selfinsured employers

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

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

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

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

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

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

B-1. An employer's premium base for assessment purposes is defined as payroll times the filed manual rate applicable to the employer times the employer's current experience modification factor, if applicable. The calculation may not include any deductible credit, other than credits for the \$1,000 and \$5,000 indemnity deductibles and the \$250 and \$500 medical deductibles established pursuant

to Title 24A, sections 2385 and 2385A. For policies written using retrospective rating, the premium base must be calculated in accordance with this paragraph regardless of the actual retrospective premium calculation.

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

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

D. Every insurance company or association subject to the assessment imposed by this section with an estimated annual payment of \$50,000 or more based on previous assessment returns may make payments quarterly. Each insurance company or association electing quarterly payments must on or before the last day of each January, each April, the 25th day of each June and the last day of each October file with the ~~board on forms prescribed by the board~~Superintendent of Insurance a return for the quarter 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. The final return must be certified by the company's or association's chief financial officer. Insurance companies or associations with an annual assessment estimate of under \$50,000 shall pay the assessment on or before June 1st and shall also file a quarterly and an annual return ~~on forms prescribed by the board~~. Affiliated insurers may aggregate their collection volume in order to meet the \$50,000 assessment threshold as long as the affiliation is consistent with the standards defined in Title 24A, section 222. Those qualifying insurance companies or associations that opt to consolidate their quarterly payments and reports may do so only if each individually licensed company or association is individually reported within each consolidated return.

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

5. Amounts of premiums and losses; distribution of assessment. The Bureau of Insurance shall provide to the board ~~publish~~ the amounts of gross direct workers' compensation premiums written by each insurance carrier and the amounts of aggregate benefits paid by each selfinsurer and group selfinsurer on or before April 1st of each year. Beginning with the assessment for the fiscal year beginning July 1, 1995 and thereafter, the total assessment must be distributed between insurance companies or associations and selfinsured employers in direct proportion to the pro rata share of disabling cases attributable to each group for the most recent calendar year for which data is available. This distribution of the assessment must be determined on a basis consistent with the information reported by the Department of Labor, Bureau of Labor Standards, Research and Statistics Division in its annual Characteristics of WorkRelated Injuries and Illnesses in Maine publication, provided that any segment of the market identified as "notinsured" be excluded from the calculation of proportionate shares. In consultation with the Director of Labor Standards, the board ~~Superintendent of Insurance~~ shall determine a date prior to the required assessment to establish the distribution.

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

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

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

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

7. Insurance company or association collections. Insurance companies or associations shall bill and collect assessments under this section on insured employers. The assessments must be separately stated amounts on all premium notices and may not be reported as premiums for any tax or regulatory purpose or for the purpose of any other law. All collected payments must be submitted

~~to the board with the next quarterly payment. The Bureau of Insurance shall report to the board all newly authorized workers' compensation carriers in order to facilitate notification to the new carrier of its obligations under this section.~~

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

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

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

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

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

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

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

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

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

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

Sec. 3. 39-A MRSA §361, as repealed and replaced by PL 2007, c. 26, §1, is amended to read:

§ 361. Payment to the General Fund; enforcement

1. Payment. All penalties assessed under this Act, ~~unless otherwise provided by law~~, are payable to the ~~Workers' Compensation Board Administrative Fund~~, ~~unless otherwise provided by law~~. Upon certification by the board that certain amounts in the ~~Workers' Compensation Board Administrative Fund~~ attributable to ~~penalties assessed pursuant to this Act are not required to support the activities of the board~~, the Treasurer of State shall transfer funds in the amount certified by the board ~~to for deposit into~~ the General Fund.

2. Enforcement and collection. All penalties assessed under this Act are enforceable by the Superior Court under section 323.

A. The Attorney General shall prosecute any action necessary to recover penalties payable to the ~~Workers' Compensation Board Administrative Fund~~, Employment Rehabilitation Fund or General Fund, or the board may retain private counsel for that purpose.

B. If a person fails to pay a penalty assessed under this Act that is payable to the ~~Workers' Compensation Board Administrative Fund~~, Employment Rehabilitation Fund or General Fund and enforcement by the Superior Court is necessary:

(1) That person shall pay the costs of prosecuting the action in Superior Court, including reasonable attorney's fees; and

(2) If the failure to pay was without due cause, any penalty assessed on that person under this Act must be doubled.

SUMMARY

This bill amends the laws governing the Workers' Compensation Board as follows.

1. Under current law, the Workers' Compensation Board determines an assessment to be levied on insurers that write workers' compensation insurance in the State for deposit in a dedicated fund to support and maintain the Workers' Compensation Board. This bill instead directs that the Superintendent of Insurance determine the assessment and that the funds be credited to the General Fund.

2. It limits the assessments levied to \$10,000,000 in any fiscal year.

3. It directs the Workers' Compensation Board to submit its proposed budget to the Commissioner of Administrative and Financial Services for inclusion in the General Fund appropriation bill provided for in the Maine Revised Statutes, Title 5, section 1581.