CHAPTER 26

THE WORKERS' COMPENSATION RESIDUAL MARKET DEFICIT RESOLUTION AND RECOVERY ACT

§2391. Title and scope of chapter

1. Title. This chapter may be known and cited as "The Workers' Compensation Residual Market Deficit Resolution and Recovery Act."
[PL 1995, c. 289, §11 (NEW).]

2. Scope. This chapter establishes an efficient and effective mechanism for funding the obligations of the residual market mechanism in the State arising from workers' compensation insurance policies with initial effective dates or renewal dates between January 1, 1988 and December 31, 1992.
[PL 1995, c. 289, §11 (NEW).]

SECTION HISTORY

PL 1995, c. 289, §11 (NEW).

§2392. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [PL 1995, c. 289, §11 (NEW).]

1. Association. "Association" means the Maine Insurance Guaranty Association.
[PL 1995, c. 289, §11 (NEW).]

2. Board. "Board" means the governing board of the Maine Workers' Compensation Residual Market Pool.
[PL 1995, c. 289, §11 (NEW).]

3. Chapter 250. "Chapter 250" means Bureau of Insurance Rules, Chapter 250, "Requirements for Eligibility to Self-Insurer Workers' Compensation Benefits," as amended and as in existence prior to the effective date of this chapter.
[PL 1995, c. 289, §11 (NEW).]

4. Chapter 440. "Chapter 440" means Bureau of Insurance Rules, Chapter 440, "Plan of Operation for the Workers' Compensation Residual Market Mechanism," as amended, as in existence prior to the effective date of this chapter and as modified in this chapter.
[PL 1995, c. 289, §11 (NEW).]

5. Delinquent insurer. "Delinquent insurer" means an insurer that has not timely paid in full that insurer's allocated share pursuant to section 2393, subsection 1, paragraph A, subparagraphs (1) or (2) or section 2393, subsection 1, paragraph B, subparagraphs (1) to (5), except as provided in section 2393, subsection 1, paragraph A, subparagraph (3), division (d) and section 2393, subsection 1, paragraph B, subparagraph (6), division (d).
[PL 1995, c. 289, §11 (NEW).]

6. Employer. "Employer" means any employer in the State that, at any time relevant under this chapter, is required under the Workers' Compensation Act to secure workers' compensation benefits for its employees.
[PL 1995, c. 289, §11 (NEW).]

7. Expense constant. "Expense constant" means a premium charge approved by the superintendent that applies to every policy, in addition to other premium charges, covering expenses

such as those for issuing, recording and auditing that are common to all workers' compensation policies regardless of premium size.
[PL 1995, c. 289, §11 (NEW).]

8. Fresh start period. "Fresh start period" means the period from January 1, 1988 to December 31, 1992.
[PL 1995, c. 289, §11 (NEW).]

9. Initial surcharge period. "Initial surcharge period" means the period from July 1, 1995 to June 30, 2003.
[PL 1995, c. 289, §11 (NEW).]

10. Insured employer. "Insured employer" means an employer in the State that, on or after July 1, 1995, secures or continues to secure workers' compensation benefits under the Workers' Compensation Act for its employees through the purchase of an insurance policy.
[PL 1995, c. 289, §11 (NEW).]

11. Insurer. "Insurer" means every insurer or group of affiliated insurers authorized to provide workers' compensation insurance in the State at any time during the fresh start period. For purposes of this chapter, a group of affiliated companies under common ownership, management or control is treated as one entity.
[PL 1995, c. 289, §11 (NEW).]

12. Large deductible policy. "Large deductible policy" means a workers' compensation policy written with a per occurrence deductible in excess of $5,000 or a medical deductible in excess of $500.
[PL 1995, c. 289, §11 (NEW).]

13. Major insurer. "Major insurer" means any insurer that was designated by the superintendent as a servicing carrier in the workers' compensation residual market in the State as of October 1, 1986.
[PL 1995, c. 289, §11 (NEW).]

14. Minor insurer. "Minor insurer" means any insurer other than a major insurer.
[PL 1995, c. 289, §11 (NEW).]

15. Net direct written premium. "Net direct written premium" means the Maine direct gross premiums charged less all return premiums, except dividends and savings refunded under participating policies, returned to policyholders for all Workers' Compensation and Occupational Disease Insurance written in this State. Excess workers' compensation insurance is not considered "net direct written premium."
[PL 1995, c. 289, §11 (NEW).]

16. Net present value. "Net present value" is the sum of future payments, discounted to a specified valuation date at the discount rate provided.
[PL 1995, c. 289, §11 (NEW).]

17. Plan year. "Plan year" means, for an employer, the period beginning on the self-insured employer's plan approval or renewal date and ending the day before the next plan renewal or anniversary date. The plan renewal date for a member of a group self-insurer is the group's plan renewal date; the plan approval date for a new member joining an established group is the effective date of group membership. The plan year may be less than 12 months as a result of changes in plan accounting periods, midyear entry into a group self-insurance plan or termination of self-insurance authorization.
[PL 1995, c. 289, §11 (NEW).]

18. Policy year. "Policy year" means the following:

A. With respect to a particular calendar year, all policies issued or renewed in that calendar year and all subsequent events occurring in later years relating to those policies, including premium

adjustments, audit results and claims experience under those policies; and [PL 1995, c. 289, §11 (NEW).]

B. With respect to a particular employer, the 12-month period beginning upon the date of issuance or renewal of a policy and ending the day before the next renewal date and all subsequent events occurring in later years relating to those policies, including premium adjustments, audit results and claims experience under that policy. [PL 1995, c. 289, §11 (NEW).]

[PL 1995, c. 289, §11 (NEW).]

19. Pool. "Pool" means the Maine Workers' Compensation Residual Market Pool described in and governed by chapter 440.

[PL 1995, c. 289, §11 (NEW).]

20. Residual market. "Residual market" means the instrument to provide coverage to employers not able to obtain coverage in the voluntary market.

[PL 1995, c. 289, §11 (NEW).]

21. Self-insured employer. "Self-insured employer" means an employer that, on or after July 1, 1995, secures or continues to secure workers' compensation through a self-insured program under the Workers' Compensation Act as approved by the superintendent pursuant to the provisions of Title 39-A, section 403, subsection 3.

[PL 1995, c. 289, §11 (NEW).]

22. Self-insured group or groups. "Self-insured group or groups" means a self-insured group approved by the superintendent pursuant to chapter 250, section 3.

[PL 1995, c. 289, §11 (NEW).]

22-A. Succession transaction. "Succession transaction" means an asset sale, merger, consolidation, reorganization or restructuring that creates a successor self-insured employer.

[PL 1995, c. 619, §1 (NEW); PL 1995, c. 619, §8 (AFF).]

22-B. Successor self-insured employer. "Successor self-insured employer" means any self-insured employer that is a successor entity to another employer or employers doing business in this State. A successor self-insured employer includes any entity that purchases all or a portion of the assets of an employer or the surviving entity in any other merger, consolidation, reorganization or restructuring.

[PL 1995, c. 619, §1 (NEW); PL 1995, c. 619, §8 (AFF).]

23. Superintendent. "Superintendent" means the Superintendent of Insurance.

[PL 1995, c. 289, §11 (NEW).]

24. Surchargeable premium. "Surchargeable premium" means:

A. For insured employers, the manual workers' compensation premium applicable to the insured employer, as adjusted by any applicable experience modification factor, premium discount, expense constant and any other debits or credits to a lawfully received premium. In calculating the surchargeable premium for retrospectively rated policies and large deductible policies, "surchargeable premium" means the discounted workers' compensation standard premium, which is the manual premium that would apply to the insured employer absent the retrospectively rated or large deductible nature of the policy, as adjusted by any applicable experience modification factor, premium discount and expense constant. For retrospectively rated and large deductible policies, the insurer shall calculate a discounted standard premium amount utilizing estimated payrolls at policy inception, subject to the final determination upon audit, applying the insurer's manual rates, the insured's experience modification factor, any premium discount, expense constant and other debits or credits to a lawfully received premium. When calculating the discounted standard premium for policies with large deductibles, the maximum credit for the deductible option

may not be greater than the amount approved by the superintendent in the most recent advisory loss cost filing for a $5,000 indemnity deductible. [PL 1995, c. 289, §11 (NEW).]

B. For self-insured employers, the manual workers' compensation premium adjusted by the experience modification factor applicable to the self-insured employer, and any applicable premium discount and expense constant. For purposes of this definition, "manual premium" means the workers' compensation premium that would have been applicable to the individual self-insured employer if calculated using the advisory loss costs in effect at the time the surcharge is due multiplied by 1.2, applying the rating rules, excluding any premium discount, and experience rating procedure approved by the superintendent for the designated workers' compensation advisory organization pursuant to section 2382-B, to the exposure and experience of the individual self-insured employer. For a self-insured employer who is a member of a self-insurance group, "surchargeable premium" means the actual amount of workers' compensation premium that is paid to the self-insurance group including experience modification, premium discount and expense constant in accordance with the requirements of chapter 250, but excluding any surplus distributions credited against or applied to reduce premiums. [PL 1995, c. 289, §11 (NEW).]

[PL 1995, c. 289, §11 (NEW).]

25. Timely pay; timely paid; timely payment. "Timely pay," "timely paid" or "timely payment" means payment by the party responsible for the payments on or before the due date specified in this chapter.

[PL 1995, c. 289, §11 (NEW).]

26. Voluntary market. "Voluntary market" means the workers' compensation insurance market in which insurance companies voluntarily offer coverage to applicants who meet the insurers' underwriting standards or guidelines.

[PL 1995, c. 289, §11 (NEW).]

27. Workers' Compensation Act. "Workers' Compensation Act" means and refers to the Maine Workers' Compensation Act of 1992, as amended.

[PL 1995, c. 289, §11 (NEW).]

28. Worker's compensation residual market mechanism. "Worker's compensation residual market mechanism" or "residual market mechanism" means the workers' compensation residual market mechanism described in and governed by Chapter 440.

[PL 1995, c. 289, §11 (NEW).]

SECTION HISTORY

PL 1995, c. 289, §11 (NEW). PL 1995, c. 619, §1 (AMD). PL 1995, c. 619, §8 (AFF).

§2393. Initial funding of pool

1. Payments by insurers. Insurers shall pay to the pool on or before January 1, 1996 the amount of $65,000,000, as follows.

A. Major insurers shall pay to the pool 90% of the $65,000,000 payment, which is $58,500,000. Each major insurer shall pay to the pool that major insurer's allocated share of the payment required by this paragraph as determined in accordance with the following:

(1) If the major insurer's percentage of the total net direct written premium in the voluntary workers' compensation market in the State for the calendar years 1989 and 1990 was less than 3.4% according to data compiled by the National Council on Compensation Insurance, then the major insurer must pay to the pool $4,906,000;

(2) If the major insurer's percentage of the total net direct written premium in the voluntary workers' compensation market in the State for the calendar years 1989 and 1990 was equal to

or greater than 3.4%, according to data compiled by the National Council on Compensation Insurance, then the major insurer must pay $4,906,000 less one of the following credits:

(a) If the major insurer's percentage of total net direct written premium in the voluntary market exceeded 25% for each of the calendar years 1989 and 1990, then $1,811,000;

(b) If the major insurer's percentage of total net direct written premium in the voluntary market exceeded 10% for each of the calendar years 1989 and 1990, then $1,772,000;

(c) If the major insurer's percentage of total net direct written premium in the voluntary market exceeded 10% for either calendar year 1989 or 1990, then $807,000;

(d) If the major insurer's percentage of total net direct written premium in the voluntary market exceeded 7.5% for each of the calendar years 1989 and 1990, then $596,000; or

(e) For any other major insurer that qualifies for credit under this subparagraph, $289,000;

(3) One or more major insurers may agree in writing to pay more or less than the amount of their allocated share under subparagraph (1) or (2); except that:

(a) A major insurer may not pay less than the allocated share under subparagraph (1) or (2), unless the written agreement is executed by all major insurers that have timely paid or agreed in writing to timely pay in full at least their allocated share;

(b) The total amount of timely payments to the pool by major insurers is equal to or greater than $58,500,000;

(c) The pool is made a 3rd-party beneficiary to a written agreement among certain major insurers that provides for:

(i) Timely payments to the pool by major insurers that are equal to $58,500,000; and

(ii) An express right of the pool to enforce the payments required by that agreement; and

(d) Timely payment of any share agreed upon in writing pursuant to this subparagraph in an amount less than the allocated share under subparagraph (1) or (2) constitutes timely payment in full of an allocated share for purposes only of subsection 1, paragraph C or section 2396, subsection 1.

(4) If the total amount paid according to the requirements of subparagraphs (1), (2) and (3) exceeds $58,500,000, the pool must disburse within 30 days the excess amount by refunding to each major insurer that has timely paid in full at least its allocated share under subparagraph (1) or (2) in direct proportion to the amount that each major insurer paid to the pool as part of the total major insurers' payment required by this paragraph. [PL 1995, c. 289, §11 (NEW).]

B. Minor insurers shall pay to the pool 10% of the $65,000,000 payment, which is $6,500,000. Each minor insurer shall pay to the pool an allocated share of the payment required by this paragraph as determined in accordance with the following.

(1) Except as provided in subparagraph (2), an allocated share equal to the sum of the amounts described in divisions (a) to (c) must be paid to the pool.

(a) Minor insurers authorized to provide workers' compensation insurance in the State at any time during 1989 pay 59% of the $6,500,000 payment, with each minor insurer paying a per capita share.

(b) Minor insurers authorized to provide workers' compensation insurance in the State at any time during 1990 pay 38% of the $6,500,000 payment, with each minor insurer paying a per capita share.

(c) Minor insurers authorized to provide workers' compensation insurance in the State at any time during 1991 pay 3% of the $6,500,000 payment, with each minor insurer paying a per capita share.

(2) A minor insurer that qualifies for a partial exemption under this subparagraph shall pay to the pool the greater of $10,000 or 2% of the minor insurer's average annual after-tax adjusted earnings for the 3 calendar years immediately prior to enactment of this chapter as reported in the minor insurer's annual statement filed with the superintendent. A minor insurer qualifies for a partial exemption from the per capita share payment required by this paragraph if, for the 3 calendar years immediately prior to enactment of this chapter, as reported in the minor insurer's annual statement filed with the superintendent, the minor insurer's:

(a) Average annual after-tax adjusted earnings were less than $2,000,000; and

(b) Surplus as to policyholders did not exceed $12,500,000.

(3) A minor insurer that has not received a partial exemption under subparagraph (2) is entitled to participation credits determined as follows.

(a) For any policy year beginning on or after January 1, 1989, the share for each minor insurer authorized to write workers' compensation insurance in the year to which the calculation in this division pertains is reduced by .05% for each .10% that its participation ratio for the year to which the assessment relates exceeds its participation ratio for the base period as calculated by dividing the minor insurer's net direct written premium for the base period by the total minor insurer's net direct written premium for the base period. For purposes of this division, "base period" means the calendar years 1983 to 1986. The participation ratio for the year to which the assessment relates is calculated by dividing the minor insurer's net direct written premium in that calendar year by the total net direct written premium of minor insurers that were authorized at any time during that year;

(b) Credits earned by a minor insurer may not result in a minor insurer's participation ratio being adjusted to less than 1/2 of its otherwise allocated share;

(c) For a minor insurer not authorized to write workers' compensation insurance in 1986, its adjusted participation ratio is 1/2 of its participation ratio in the year to which the calculation applies;

(d) Any deficiency must be distributed among all minor insurers in proportion to the adjusted participation ratio, after credit adjustments; and

(e) For purposes of this subparagraph, "adjusted participation ratio" means a minor insurer's participation ratio as calculated in accordance with this subparagraph and after application of any credits. For purposes of this subparagraph, net direct written premium does not include premiums for residual market risks reinsured by the pool or retrospective rating plan adjustments on policies effective prior to January 1, 1988.

(4) The total amount of the differences between the following must be paid by those minor insurers that actually paid their allocated share as of January 1, 1996 by allocating the difference to those minor insurers in the same proportion as each such minor insurer's payment bears to the total aggregate amount actually paid by minor insurers as of January 1, 1996:

(a) The otherwise allocated share payments under subparagraph (1); and

(b) The payments made by minor insurers that qualify for a partial exemption as provided in subparagraph (2) and any participation credits under subparagraph (3).

(5) In the event a minor insurer for any reason fails to pay its allocated share, as described in this paragraph, by January 1, 1996, then the pool may charge the deficiency resulting from those uncollected amounts to all minor insurers that actually pay their allocated share as of

January 1, 1996 by allocating that deficiency to those minor insurers in the same proportion as each such minor insurer's payment bears to the total aggregate amount actually paid by minor insurers as of January 1, 1996. Those minor insurers are subrogated to the pool's right to collect such amounts from the delinquent minor insurer.

(6) One or more minor insurers may agree in writing to pay more or less than the amount of their allocated share under subparagraphs (1) to (4), except that:

(a) A minor insurer may not pay less than the allocated shares under subparagraphs (1) to (4) unless the written agreement is executed by all minor insurers that have timely paid or agreed in writing to timely pay in full at least their allocated share;

(b) The total amount of timely payments to the pool by minor insurers is equal to or greater than $6,500,000;

(c) The pool is made a 3rd-party beneficiary to a written agreement among certain minor insurers that provides for:

(i) Timely payments to the pool by minor insurers that are equal to $6,500,000; and

(ii) An express right of the pool to enforce the payments required by that agreement; and

(d) Timely payment of any share agreed upon in writing pursuant to this subparagraph in an amount less than the allocated share under subparagraphs (1) to (4) constitutes timely payment in full of an allocated share for purposes only of subsection 1, paragraph C or section 2396, subsection 1.

(7) If the total amount paid according to the requirements of subparagraphs (1) to (6) exceeds $6,500,000, the pool must disburse within 30 days the excess amount by refunding to each minor insurer that has timely paid in full at least its allocated share under subparagraphs (1) to (4) in direct proportion to the amount that each minor insurer paid to the pool as part of the total minor insurers' payment required by this paragraph. [PL 1995, c. 289, §11 (NEW).]

C. The pool shall bill and collect from each insurer the allocated share established by paragraphs A and B. If an insurer has not timely paid its allocated share in full to the pool on or before January 1, 1996, then the insurer is considered delinquent and the following applies.

(1) The pool has all the rights, powers and authority to take all necessary and appropriate action, as determined in the pool's discretion, against the delinquent insurer to collect any amounts not paid as and when due, and any deficiency is assessed interest at the rate of 10% per annum from January 1, 1996 until full payment from the insurer is received by the pool. The pool is entitled to an award of and reimbursement from any delinquent insurer of the costs of enforcement and collection of any amounts not paid as and when due, including all costs and expenses, reasonable attorney's and paralegal's fees and any other professional fees and expenses associated with the pool's enforcement and collection efforts.

(2) If the pool has received $58,500,000 from major insurers or $6,500,000 from minor insurers, valued as of January 1, 1996, the pool shall provide prompt written notice of this fact to insurers in the same category, either major or minor. Within 90 days following a request, the pool shall assign all such rights, powers and authority, including the entitlement to costs and expenses, to any insurers in the same category of the delinquent insurer that have requested an assignment and timely paid in full at least the allocated share established by paragraphs A and B.

(3) The pool has the right to set off any amounts due under this chapter to the pool from a delinquent insurer against any sums credited by or due from the pool to the delinquent insurer

and against any other property of the delinquent insurer in the possession or under the control of the pool.

(4) Regardless of whether any action is taken pursuant to subparagraphs (1) to (3), the superintendent is authorized to exercise all authority as may be provided by and in accordance with law to take appropriate action against any delinquent insurer. In addition to any other authority the superintendent may possess under law, the superintendent upon notice and hearing may suspend a delinquent insurer's authority to transact the business of insurance in the State for so long as the insurer remains delinquent. The authority granted to the superintendent under this paragraph and jurisdiction vested in the bureau are concurrent with other actions by other parties authorized in this paragraph.

(5) Any collection by or on behalf of the pool, or amounts obtained by setoff with respect to a delinquent insurer, are retained by the pool, until the insurers in the same category as the delinquent insurer have paid the total amount required for that category, plus interest pursuant to subparagraph (1) and costs and expenses of the pool for collection in an amount not to exceed the delinquent share, valued as of January 1, 1996, to the pool. Any excess must be distributed within 90 days among the insurers in the same category as the delinquent insurer that have timely paid in full at least the allocated share established by paragraphs A and B in direct proportion to that insurer's payment to the pool as part of the total payments required by paragraph A or B, except that any collection on behalf of the pool as the result of an assignment pursuant to subparagraph (2) must be distributed as agreed among the insurers that receive the assignment from the pool.

(6) No defense or substantive argument that could have been raised or asserted related to an insurer's status as a major insurer or minor insurer or any purported contractual rights under prior or existing law is extinguished or otherwise abridged in any proceeding against a delinquent insurer instituted under subparagraphs (1) to (5). [PL 1995, c. 289, §11 (NEW).]

[PL 1995, c. 289, §11 (NEW).]

2. Payments by employers. Employers shall pay to the pool the following amounts.

A. Employers shall pay initial surcharges, in the manner described in this subsection, in an aggregate amount equal to $110,000,000, calculated on a net present value basis using January 1, 1995 as the valuation date, a discount rate of 5% and the midpoint of each calendar quarter as the date of actual receipt of surcharge proceeds remitted to the pool for each calendar quarter. Proceeds included in determining when the $110,000,000 initial surcharge is fully paid consist of:

(1) All proceeds from surcharges under this chapter on policies with effective dates on or after July 1, 1995 and surcharges under this chapter on self-insured employers with plan years commencing on or after July 1, 1995; and

(2) All proceeds from surcharges actually received in immediately available funds by the pool after 5:00 p.m., September 30, 1995, whether the proceeds result from a surcharge under this chapter or under laws existing prior to enactment of this chapter. [PL 1995, c. 289, §11 (NEW).]

B. Proceeds from surcharges under existing laws actually received in immediately available funds by the pool on or before 5:00 p.m., September 30, 1995 may not be credited against the initial surcharge requirement. [PL 1995, c. 289, §11 (NEW).]

C. The pool shall maintain records reflecting actual dates of receipt of proceeds from surcharges sufficient to enable the net present value calculation. [PL 1995, c. 289, §11 (NEW).]

D. The initial surcharges must be paid in accordance with the following provisions.

(1) Beginning July 1, 1995 every insurer writing workers' compensation insurance in the State shall collect from workers' compensation insurance policyholders and pay to the pool a surcharge on all surchargeable premiums received by the insurer for those policies. During the initial surcharge period, the surcharge is at a fixed rate of 6.32% of the surchargeable premium. The surcharge may be applied only to policies with an effective date on or after 12:01 a.m., July 1, 1995. All surcharges received by each insurer during the preceding calendar quarter must be remitted to the pool within 15 days following the end of each calendar quarter, except that servicing carriers shall remit on February 15th, May 15th, August 15th and November 15th of each year. Any surcharge proceeds not remitted on a timely basis accrue interest at the rate of 10% per annum from the due date until paid in full. The pool is entitled to reimbursement from any insurer failing to remit surcharge proceeds on a timely basis for the pool's costs of collection of those amounts, including all collection costs and fees, reasonable attorney's and paralegal's fees and any other professional fees and expenses associated with the pool's collection efforts. The surcharges described in this subparagraph do not apply to reinsurance recognized by the superintendent pursuant to Chapter 250, section 2, paragraph G or section 3, paragraph G, procured by an individual self-insured employer or a self-insured employer group.

(2) Self-insured employers that secured their obligation to provide workers' compensation benefits under the Workers' Compensation Act through issuance or renewal at any point during the fresh start period of an insurance policy for any portion of any of the policy years 1988 to 1992 are subject to a surcharge as provided in the following.

(a) During the initial surcharge period the rate of surcharge is 6.32% of the surchargeable premium as adjusted pursuant to this paragraph for the self-insured employer's current plan year utilizing estimated payroll as submitted with the self-insured employer's renewal application for authority to self-insure, in accordance with Chapter 250, section 2, paragraph C, subparagraph 1, division c or Chapter 250, section 3, paragraph C, subparagraph 1, division g as applicable, subject to audit pursuant to division (d), subdivision (iii). If the plan year in which a surcharge is collected or a credit is distributed is shorter than 12 months, due to a change in accounting period or termination of self-insurance authorization, the surcharge or credit for that plan year must be based upon the final audited payroll for the short plan year.

(b) All surcharges must be collected or distributed on a plan year basis. In each plan year, the percentage of the surchargeable premium to be surcharged is the same percentage as is applied to an insured employer whose policy period coincided with the plan year.

(c) Except for a successor self-insured employer, each self-insured employer shall pay surcharges relating to only that portion of the policy years 1988 to 1992 in which the self-insured employer insured its workers' compensation obligations. The surcharge factor, as determined by the board under this chapter, must be adjusted to take into consideration the policy years or portions of policy years 1988 to 1992 in which a self-insured employer was self-insured.

The self-insured employer adjustment is determined as follows. The surcharge factor must be multiplied by the factor attributed to each of the years 1988 to 1992, as set forth in the table below. If a self-insured employer was insured only during a portion of a policy year, then the factor for that year is prorated based on the ratio of the number of days in the policy year during which the self-insured employer was insured to 365 days.

Policy Year	Factor
1988	28.48%
1989	30.70%
1990	23.26%
1991	11.55%

1992 6.01%

(d) The board shall administer the surcharges on self-insured employers as follows.

(i) The board shall issue surcharge billings to self-insured employers, pursue collection of all invoiced surcharges, initiate legal proceedings as necessary to collect surcharges and maintain records adequate to administer the surcharge process. The records of the board and of the bureau form the basis for identifying self-insured employers who are subject to this paragraph.

(ii) Annual surcharges may be paid in a single lump sum within 30 days of the receipt of the pool's invoice or in quarterly installments at the self-insured employer's option. The board shall issue a yearly invoice as soon as practicable after the self-insured employer's plan approval or renewal date and receipt of all necessary supporting information from the superintendent. Each invoice must contain a schedule of dates when quarterly installments are due and clearly state the policy year or years for which the surcharge is imposed, the surcharge percentage multiplied by the factor applicable to each policy year and the amount of the surchargeable premium.

(iii) Each individual self-insured employer shall report final audited payrolls to the pool not later than 60 days after the end of each plan year and each self-insured employer that is a member of a self-insured group or the group's administrator, as the group may select, shall report final audited payrolls to the pool not later than 120 days after the end of each plan year and shall remit with the audit information any additional surcharges resulting from the audit.

(iv) Upon the request of a self-insured employer, including a successor self-insured employer or an administrator of a self-insurance group, the board may determine whether there was a factual inaccuracy in the information underlying a surcharge billing issued by the board for the fresh start period or whether the surcharge calculated by the board is consistent with the provisions of this subparagraph. The request must be filed within 180 days from the date on which the final payment is due and must be in writing, including a statement of the reason for the request and the amount, if known, of the alleged overcharge. If an appeal based upon an alleged overcharge is sustained, the board shall refund the overcharge, together with any investment earnings on those amounts. If a self-insured employer is aggrieved by the final action or decision of the board, or if the board does not act on the written request within 60 days, the self-insured employer may appeal to the superintendent within 60 days of such action or decision of the board. Notwithstanding a pending appeal, a self-insured employer must pay any surcharge billing issued by the board.

(e) Self-insured employers have the following obligations with respect to the surcharge process.

(i) As a condition of continuing authorization to self-insure, each self-insured employer and each group self-insurance administrator shall assist the board and the superintendent in the calculation, billing and collection of any applicable surcharge. The required assistance includes maintaining and providing, upon request of the board or the superintendent, actual premium history and all payroll and experience information necessary to calculate self-insured employer premiums, as specified in this subparagraph. Information provided by the self-insured employer is subject to audit by the pool and the superintendent at any time and self-insured employers shall provide to the pool, or its designee, and to the superintendent full and complete access to all books and records relating in any way to the audit. Group self-insurance administrators shall give prompt notice to the superintendent of any changes in group membership.

(ii) Information provided by self-insured employers to the board pursuant to this paragraph is confidential. The board shall protect the confidentiality of all self-insured employer information in its possession, whether the information is obtained directly from the self-insured employer or from the superintendent or a group administrator. All information relating to a self-insured employer provided pursuant to this paragraph and in the possession of the board or superintendent continues to be confidential until that information is destroyed.

(iii) A self-insurance group may act as the collection agent for its members. Any group so electing shall notify the board. The board shall bill the group on a consolidated basis. The group shall remit its entire quarterly payment to the board within 30 days after receiving the invoice, whether or not any members remain in default and notify the board and the superintendent of any delinquency.

(iv) Each self-insured employer shall make provisions for possible surcharges in the normal course of operations and pay the full amount of any surcharge installment within 30 days after receiving an invoice from the board or the self-insured employer's self-insurance group. Late payments are subject to interest at the rate of 10% per annum.

(v) The failure of any self-insured employer or self-insurance group to comply with its duties under this paragraph constitutes grounds for suspension, revocation, termination of the option to self-insure, expulsion from a self-insurance group or other appropriate sanctions authorized under section 12-A, in addition to all procedures for the collection of past-due accounts otherwise available by law to the board or the governing body of the self-insurance group.

(f) The superintendent has the following responsibilities with respect to the surcharge process.

(i) The superintendent shall furnish to the board, on a monthly basis, a list of all self-insurance plan approvals, renewals and anniversaries that have occurred since the last report or for any other reason were not included in any previous report, including all approvals, terminations and membership changes for group self-insurers. For each employer listed, the superintendent shall provide all available information necessary for the board's imputed calculations under this paragraph, including: the date the new plan year began; the self-insurance group, if any, to which the self-insured employer belongs; the dates of coverage under each policy issued or renewed in policy years 1988 to 1992; the rating information for the current plan year, including estimated payroll by classification, premium rate for each classification, experience modification and other applicable rating adjustments; information relating to changes of ownership or control, changes of operations, changes of name or organizational structure; and other information necessary to determine successorship.

(ii) The superintendent shall supplement promptly the initial report as necessary, including any revision to the self-insured employer's rating information on audit, any other additions or corrections to incomplete or inaccurate information provided in the initial report and the length of the plan year, if shorter than 12 months.

(g) A successor self-insured employer is subject to surcharge on the same basis as the predecessor employer would be if still actively doing business and self-insured. If a self-insured employer is the successor to more than one employer, then the successor employer's self-insured employer adjustment is the sum of each predecessor employer's self-insured employer adjustment multiplied by the ratio of the employer's surchargeable

premium for the 12-month period immediately preceding the succession transaction to the combined surchargeable premium of all predecessor employers for that 12-month period.

(i) If one or more of the predecessor employers was insured at the time of the succession transaction, its self-insured employer adjustment is calculated pursuant to division (c), (h) or (i) as if it had become self-insured at the time of the succession transaction.

(ii) If business operations that were covered under a single workers' compensation policy or certificate of self-insurance authority are subsequently separately owned by virtue of any succession transaction, dissolution, reincorporation or other transaction or series of transactions, for purposes of this subparagraph each business is treated as a distinct employer, subject to surcharge as either an insured employer or a self-insured employer.

(iii) If substantial changes in operations during the 12-month period immediately preceding the succession transaction make the 12-month surchargeable premium an inappropriate measure of a predecessor employer's workers' compensation exposure prior to the transaction, the board may adopt procedures for calculating an annualized premium in a manner consistent with the intent of this subparagraph.

(h) A self-insured employer that secured its obligation to provide workers' compensation benefits under the Workers' Compensation Act through a self-insurance program approved by the superintendent for the entirety of that self-insured employer's policy years 1988 to 1992, in which the self-insured employer actually had an obligation to secure benefits under the Workers' Compensation Act is not subject to the surcharge.

(i) Except for any successor self-insured employer, self-insured employers that commence operations in the State on or after July 1, 1995 are subject to surcharge under this subparagraph on the same basis as self-insured employers that secured compensation under the Workers' Compensation Act by the purchase of an insurance policy throughout the entire fresh start period.

(3) An employer may, as specified in this subparagraph, prepay all of its surcharges for a period of 10 consecutive policy years or plan years. The 10-year period starts with the employer's first renewal date or plan year following July 1, 1995. Within 30 days after the inception of the first plan year or first policy renewal date following July 1, 1995, if the employer intends to exercise this option, the employer must file with the pool written notice electing to make a lump-sum payment of surcharges and shall include with the notice the employer's full lump-sum payment. If the election is not made within 30 days after the first day of the first plan year or policy year following July 1, 1995, the option expires and is no longer available. The pool shall implement such procedures for administering this option as the board determines necessary. An employer that elects this option shall reimburse the pool for its expenses of administering this option for that employer, including the cost of individually allocating those costs to individual employers, in accordance with billing procedures developed and implemented by the board. This subparagraph does not eliminate or limit the employer's liability to pay adjusted surcharges or supplemental surcharges pursuant to paragraph E or section 2394.

For purposes of this subparagraph, "lump-sum payment" is the surcharge for the first year multiplied by 10 and discounted to net present value using:

(a) A 5% discount rate;

(b) The first day of the first plan year or policy year starting on or after July 1, 1995; and

(c) An assumption that the surcharge for each of the 10 plan years or policy years would have been paid on the first day of each subsequent plan year or policy year. [PL 2011, c. 524, §11 (AMD).]

E. The initial surcharge percentage may be adjusted by the pool in accordance with the following provisions.

(1) Each July 1st beginning in 2003, the board shall establish a surcharge percentage to be imposed on all workers' compensation insurance policies issued or renewed on or after that date until the effective date of any subsequent adjustment in the surcharge percentage established by the board; except that, if supplemental surcharges and assessments have commenced under section 2394, no further adjustments may be made under this subparagraph. The surcharge must be at a level determined by the board to be sufficient to produce cash receipts over the ensuing 24 months that, together with all other funds reasonably anticipated by the board to be available on a cash basis over that period, produce an amount not less than the pool's projected cash requirements to meet its obligations over that period. In making that determination, the board shall employ and rely upon the advice of professional and consulting services, including services available through the pool's internal staff, as the board determines necessary.

(2) If the surcharge percentage established under this subparagraph exceeds 6.32%, then a prepaid employer shall pay surcharges for that future assessment period at the same rate as those employers who paid annually, based upon the employer's surchargeable premium for the policy year or plan year to which the increased surcharge percentage applies. A prepaid employer may take a credit for the surcharges prepaid for that assessment period pursuant to section 2393, subsection 2, paragraph D, subparagraph (3) in an amount equal to the net present value calculated on a basis consistent with paragraph D, subparagraph (2), division (d), subdivision (ii). If the surcharge percentage is less than 6.32% for that future assessment period, then the pool shall refund to a prepaid employer an amount equal to the difference between the value of the lump-sum surcharge paid for the future assessment period calculated on a basis consistent with paragraph D, subparagraph (2), division (d), subdivision (ii) and the amount of surcharge due based upon the adjusted surcharge percentage and applicable surchargeable premium. For purposes of this subparagraph, "prepaid employer" means an employer who has elected to pay surcharges on a lump-sum basis pursuant to paragraph D, subparagraph (3).

(3) The board has authority to make interim adjustments in the surcharge percentage on or after July 1, 2003, to be effective on dates other than July 1st as specified by the board, to the extent considered necessary by the board to produce sufficient cash receipts from surcharges over the ensuing 24 months that, together with all other funds reasonably anticipated by the board to be available on a cash basis to the pool over the ensuing 24 months, will be sufficient to meet the pool's anticipated cash requirements over that period.

(4) In projecting the pool's anticipated cash requirements, the board shall maintain a reserve equal to 25% of the cash expenditures of the pool over the immediately preceding 12-month period. [PL 1995, c. 289, §11 (NEW).]

F. The surcharges required by this subsection are considered premium for cancellation and nonrenewal purposes only and are not subject to premium tax, Maine Insurance Guaranty Association assessments, agents' commissions or other payments required on insurance policy premiums. [PL 1995, c. 289, §11 (NEW).]

G. Employer surcharges required by this chapter are suspended if:

(1) The board determines that the pool's assets are adequate to satisfy all remaining obligations, including any necessary repayment to insurers that satisfy the requirements of subparagraph (2); and

(2) The insurers and employers have been repaid by the pool in amounts necessary to produce a ratio of actual surcharges under this subsection paid by employers calculated on a net present value basis using January 1, 1995 as a valuation date and a discount rate of 5% to actual payments by insurers to the pool under subsection 1, valued as of January 1, 1996, not including employer surcharges remitted to the pool by insurers, that is the same as 11 to 6.5, for employers and insurers respectively. [PL 1995, c. 289, §11 (NEW).]

H. If the board suspends initial surcharges and the pool subsequently requires additional assets to satisfy remaining obligations, the board shall order additional initial surcharges consistent with this subsection. The board shall review the relationship between the pool's assets and liabilities as often as determined necessary by the board, but at least annually. Projections of assets and liabilities contained in any quarterly or annual statements of operation prepared by or at the direction of the board do not constitute a determination under this subsection. [PL 1995, c. 289, §11 (NEW).]

[PL 2011, c. 524, §11 (AMD).]

3. Payments by Maine Insurance Guaranty Association. The association shall pay to the pool $1,538,039 on or before February 15th, May 15th, August 15th, and November 15th of each year for 40 consecutive calendar quarters beginning August 15, 1996.

A. Each payment made by the association to the pool under this subsection is treated as a covered claim pursuant to section 4435, subsection 4, except that any provision or authority for the association to seek reimbursement or recoupment from any source other than by assessments to association member insurers does not apply. This section does not limit or impair a member insurer's right to recoupment under section 4447. [PL 1995, c. 289, §11 (NEW).]

B. The quarterly payments by the association to the pool as required by this subsection must be made regardless of the financial condition or actual or projected cash requirements of the pool. [PL 1995, c. 289, §11 (NEW).]

[PL 1995, c. 289, §11 (NEW).]

SECTION HISTORY

RR 1995, c. 2, §52 (COR). PL 1995, c. 289, §11 (NEW). PL 1995, c. 619, §§2-6 (AMD). PL 1995, c. 619, §8 (AFF). PL 2011, c. 524, §11 (AMD).

§2394. Funding subsequent cash deficiencies

If the insurers have made payments to the pool totalling $65,000,000 valued as of January 1, 1996 pursuant to section 2393, subsection 1 and the employers have paid surcharges totalling $110,000,000 calculated on a net present value basis using January 1, 1995 as a valuation date and a discount rate of 5%, pursuant to section 2393, subsection 2, on each July 1st following the full payment date, or more often if the board considers it necessary: [PL 1995, c. 289, §11 (NEW).]

1. Determine cash requirements. The board shall determine the amount of cash receipts that will be required over the ensuing 24 months, in addition to all other funds reasonably anticipated by the board to be available on a cash basis over that period, to produce an amount not less than the pool's projected cash requirements to meet its obligations over that period. In making this determination, the board shall employ and may rely upon professional and consulting services, including such services as may be available through its internal staff, as the board considers necessary. If cash requirements determinations under this subsection commence, any cash requirements determinations and initial surcharge percentage adjustments under section 2393, subsection 2, paragraph E cease. In projecting the pool's anticipated cash requirements, the board shall maintain a reserve equal to 25% of the cash expenditures of the pool over the immediately preceding 12 months; and

[PL 1995, c. 289, §11 (NEW).]

2. Establish supplemental surcharges and assessments. The pool shall establish, bill and collect supplemental surcharges from employers and assessments from insurers in an aggregate amount determined by the board to be sufficient to satisfy the pool's cash requirements, determined under subsection 1, in accordance with the following provisions.

A. Liability for funding cash requirements determined under subsection 1 is allocated 70% to employers and 30% to insurers. [PL 1995, c. 289, §11 (NEW).]

B. The pool shall establish a surcharge on employers, reflected as a percentage of surchargeable premium, that the board reasonably expects will be sufficient to generate cash receipts over the ensuing 24-month period equal to 70% of the pool's cash requirements for such period as determined pursuant to subsection 1. The resulting employer surcharges are billed and collected in the same manner as provided in section 2393, subsection 2, paragraph D. [PL 1995, c. 289, §11 (NEW).]

C. The pool shall establish, bill and collect from insurers assessments equal to the remaining 30% of the pool's cash requirements. Major insurers are responsible for 90% and minor insurers are responsible for 10% of these assessments.

(1) Assessments under this paragraph must be determined and billed quarterly by the pool in an amount equal to 42.9% of the cash receipts actually received by the pool from employer supplemental surcharges during the immediately preceding calendar quarter and must be allocated among existing insurers in the same category in direct proportion to amounts paid by or otherwise collected from those insurers by or on behalf of the pool under section 2393, subsection 1. Assessments billed by the pool must be paid within 30 days of the billing date.

(2) The enforcement provisions established by section 2393, subsection 1, paragraph C apply to assessments on insurers under this paragraph. [PL 1995, c. 289, §11 (NEW).]

D. For purposes of establishing the surcharge upon employers, the pool's cash requirements may not include any amounts necessary to compensate the pool for any failure by insurers to pay the full amount of the assessments charged to insurers under this subsection. [PL 1995, c. 289, §11 (NEW).]

[PL 1995, c. 289, §11 (NEW).]

For the purposes of this section, "full payment date" means the date on which insurers have paid the entire amount required pursuant to section 2393, subsection 1 and on which employers have paid the entire amount required pursuant to section 2393, subsection 2. [PL 1995, c. 289, §11 (NEW).]

SECTION HISTORY

PL 1995, c. 289, §11 (NEW).

§2395. Revisions to residual market mechanism plan of operation

1. Plan manager. The board shall appoint a plan manager who reports to and serves at the pleasure, direction and control of the board. The board has the exclusive right to retain any individual or organization as plan manager and to terminate the plan manager. The board is exclusively responsible for establishing the terms and conditions, including compensation, under which the plan manager serves.

[PL 1995, c. 289, §11 (NEW).]

2. Appointment of employer representatives. The 5 members of the board of governors serving as representatives of the business community of the State are appointed by the Governor for staggered 3-year terms, with at least one member appointed each year. All members whose terms have not expired on or before July 3, 1995 continue on the board until their terms expire.

[PL 1995, c. 289, §11 (NEW).]

3. Staff and consultants. The board may employ, or otherwise retain, staff and consultants as the board considers necessary or appropriate to effect the purposes of this chapter and chapter 440 and to otherwise administer pool operations. The board or its designee is exclusively responsible for establishing the responsibilities and compensation of all staff employed by the pool and are exclusively responsible for establishing the terms and conditions, including compensation, of all consultants retained by the pool.
[PL 1995, c. 289, §11 (NEW).]

4. Transfer of policies. An insurer may transfer any rights, obligations and liabilities of a workers' compensation insurance policy issued pursuant to the residual market mechanism.
[PL 1995, c. 289, §11 (NEW).]

5. Authority to borrow money. The pool may, when directed by the board, borrow money and enter into financing transactions in the name of and on behalf of the pool and issue evidences of indebtedness in connection with those transactions. To secure the payment of any indebtedness incurred pursuant to this subsection, the pool may pledge and create a lien upon any or all of its receivables or revenues or grant such other security interests in its property as the board determines reasonable and proper for the security of the holders of indebtedness. The terms and conditions of any borrowing, including, but not limited to, dates, maturities, interest and rates, must be established by the board.
[PL 1995, c. 289, §11 (NEW).]

6. Report required. Beginning in 1996, the board shall file an annual report on or before June 1st to the Governor, the superintendent, the President of the Senate and the Speaker of the House of Representatives and the joint standing committee of the Legislature having jurisdiction over banking and insurance matters. The report must identify the following information:

A. The pool's most recent audited financial statements; [PL 1995, c. 400, §1 (NEW).]

B. The total claims payments made by the pool in the preceding 12 months; [PL 1995, c. 400, §1 (NEW).]

C. The most recent actuarial report, including cash flow and deficit projections for the pool; [PL 1995, c. 400, §1 (NEW).]

D. A report of changes to the operations of the pool; [PL 1995, c. 400, §1 (NEW).]

E. A summary of the number of open claims and aggregate reserves for each policy year; and [PL 1995, c. 400, §1 (NEW).]

F. Any information required to be maintained by the pool pursuant to section 2393, subsection 2, paragraph E and section 2394, subsection 1. [PL 1995, c. 400, §1 (NEW).]

[PL 1995, c. 400, §1 (NEW).]

SECTION HISTORY

PL 1995, c. 289, §11 (NEW). PL 1995, c. 400, §1 (AMD).

§2396. Coordination of law

1. Causes of action extinguished; exception. Notwithstanding Title 1, section 302, a cause of action or administrative proceeding that could have been asserted or instituted, whether or not pending, prior to or on the effective date of this Act arising out of or relating to sections 2386 and 2386-A and their predecessor statutes, sections 2366 and 2367 or due to an insurer's performance as a servicing carrier or other participation in the residual market mechanism may not exist or be brought against the pool, the board or an insurer that has timely paid to the pool in full at least the allocated share pursuant to section 2393, subsection 1. This subsection does not apply to: claims by servicing carriers for quarterly reimbursement from the pool; claims arising from a written agreement among any of the major insurers and the pool relating to payment of the allocated share of a delinquent insurer pursuant

to section 2393, subsection 1; claims by an individual policyholder against its insurer; or claims by employees for benefits under residual market policies.
[PL 1995, c. 289, §11 (NEW).]

2. Repeal of chapter 720. The Bureau of Insurance Rules, chapter 720, is repealed effective July 1, 1995. The collection procedures set forth in section 2393, subsection 2, paragraph D, subparagraph (2) apply to surcharges assessed under chapter 720 prior to the effective date of this chapter.
[PL 1995, c. 289, §11 (NEW).]

3. Vacation of orders. All orders of the superintendent relating to surcharges and assessments arising out of section 2386-A are vacated except to the extent that they establish the amount and method of calculation of surcharges paid or to be paid by employers on policies issued or renewed with effective dates on or before June 30, 1995, and self-insurance plan years beginning on or before June 30, 1995. All other decisions, orders and rules issued and adopted by the superintendent relating to workers' compensation insurance are invalid to the extent that they are inconsistent with this chapter.
[PL 1995, c. 289, §11 (NEW).]

SECTION HISTORY

PL 1995, c. 289, §11 (NEW).

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