

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

(Governor's Bill)
FIRST REGULAR SESSION

ONE HUNDRED AND NINTH LEGISLATURE

Legislative Document

No. 1566

S. P. 505

In Senate, April 19, 1979

Referred to the Committee on Business Legislation. Sent down for concurrence and ordered printed.

Presented by Senator Clark of Cumberland.

MAY M. ROSS, Secretary of the Senate

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-NINE

**AN ACT to Amend the Rate Filing Disapproval Requirements Pertaining to
Nonprofit Hospital and Medical Service Organizations and Health Insurance
Carriers.**

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

Sec. 1. 24 MRSA § 2322, as amended by PL 1977, c. 694, § 383, is further amended to read:

§ 2322. Disapproval of filing

If, at any time, the superintendent has reason to believe that a filing does not meet the requirements that rates shall not be excessive, inadequate or unfairly discriminatory ~~and or~~ violates any of Title 24-A, chapter 23, to the extent it is applicable pursuant to section 2317, he shall, after a hearing held upon not less than 10 days' written notice to the organization making the filing specifying the matters to be considered at such hearing, issue an order specifying in what respects, if any, he finds that such filing fails to meet the requirements that rates shall not be excessive, inadequate or unfairly discriminatory and stating when, within a reasonable period thereafter, such filing shall be deemed no longer effective. ~~The superintendent shall have the burden of proof at any hearing concerning a determination that the rates are excessive, inadequate or unfairly~~

~~discriminatory~~ Copies of the order shall be sent to the organization making the filing. The order shall not affect any individual subscriber or membership contract made or issued prior to the expiration of the effective period set forth in the order. Hearings held under this section shall conform to the procedural requirements set forth in the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter IV.

Sec. 2. 24-A MRSA § 2736-A, as amended by PL 1977, c. 694, § 422, is further amended to read:

§ 2736-A. Disapproval of filing

If, at any time, the superintendent has reason to believe that a filing does not meet the requirements that rates shall not be excessive, inadequate or unfairly discriminatory ~~and or~~ violates any of the provisions of chapter 23, he shall, after a hearing held upon not less than 10 days' written notice to the insurer making the filing specifying the matters to be considered at such hearing, issue an order specifying in what respects, if any, he finds that such filing fails to meet the requirements that rates shall not be excessive, inadequate or unfairly discriminatory and stating when, within a reasonable time period thereafter, such filing shall be deemed no longer effective. ~~The superintendent shall have the burden of proof at any hearing concerning a determination that the rates are excessive, inadequate or unfairly discriminatory~~ Copies of the order shall be sent to the insurer making the filing. The order shall not affect any policy issued prior to the expiration of the effective period set forth in the order. Hearings held under this section shall conform to the procedural requirements set forth in the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter IV.

STATEMENT OF FACT

The current statutory language which places the "burden of proof" upon the Superintendent of Insurance in establishing that rates are inadequate, excessive or unfairly discriminatory is objectionable for 2 major reasons. First, the placing of the burden of proof on the administrative decision-maker runs counter to general principles of administrative law and Maine law regarding rate-making determinations. For example, in proceedings before the Public Utilities Commission the utility which has filed the rate bears the burden of proof. Second, in the majority of jurisdictions where rate control authority exists, the party which requests higher rates has the burden of justifying such rates.