

# MAINE STATE LEGISLATURE

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1 (New Draft of H.P. 1239, L.D. 1648)

2 FIRST REGULAR SESSION  
3

4 ONE HUNDRED AND ELEVENTH LEGISLATURE  
5

6 Legislative Document

No. 1758

8 H.P. 1325

House of Representatives, June 14, 1983

9 Reported by Representative Pouliot from the Committee on Business  
10 Legislation and printed under Joint Rule 2.

11 Original bill presented by Speaker Martin of Eagle Lake. Cosponsored by  
Senator Pray of Penobscot, Representative Brannigan of Portland and Senator  
Clark of Cumberland.

EDWIN H. PERT, Clerk

12  
13 STATE OF MAINE  
14

15 IN THE YEAR OF OUR LORD  
16 NINETEEN HUNDRED AND EIGHTY-THREE  
17

18 AN ACT to Clarify the Rate Filing  
19 Procedures and Standards for Workers'  
20 Compensation Insurance.  
21

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

24 Sec. 1. 39 MRSA §22, as amended by PL 1981, c.  
25 471, §§1 and 2, is repealed.

26 Sec. 2. 39 MRSA §22-B is enacted to read:

27 §22-B. Approval of insurance policies and rates

28 The following provisions shall apply to approval  
29 of insurance policies and rates by the Superintendent  
30 of Insurance.

31 1. Policies. Every insurance company issuing  
32 workers' compensation insurance policies covering the

1 payment of compensation and benefits provided for in  
2 this Act shall file with the Superintendent of Insur-  
3 ance:

4 A. A copy of the form of the policies. A policy  
5 may not be issued until the superintendent has  
6 approved the form; and

7 B. Its classification of risks and their premium  
8 rates and any subsequent proposed classifications  
9 and premium rates, which may not take effect  
10 until the superintendent has approved them.

11 Premium rates less than those approved may be used  
12 and filed with the superintendent. If the superin-  
13 tendent has reason to believe that the filing pro-  
14 duces rates which are inadequate or unfairly discrim-  
15 inatory, he may disapprove them under Title 24-A,  
16 chapters 23 and 25.

17 2. Approval of rates. The superintendent shall  
18 apply the procedures and standards of this section in  
19 investigating, reviewing and approving or disapprov-  
20 ing rates.

21 A. He may require the filing of specific rates  
22 for workers' compensation insurance, including  
23 classifications of risks, experience or any other  
24 rating information from insurance companies  
25 authorized to transact insurance in this State.

26 B. He may make or cause to be made investiga-  
27 tions as he may deem necessary to satisfy himself  
28 that the rates to be promulgated are just and  
29 reasonable.

30 C. He may at any time, after public hearing,  
31 withdraw his approval of a previously approved  
32 rate filing.

33 3. Contents of filing. A rate filing shall  
34 include, for each company included in the filing:

35 A. For each of the 3 calendar years immediately  
36 preceding the date of the filing:

- 1                   (1) The actual gross earned premiums allo-  
2                   cable to the coverage of risks in this  
3                   State;
- 4                   (2) For unearned premium, earned premium,  
5                   loss and loss expense reserve funds, and  
6                   capital and surplus subject to investment,  
7                   allocable to the coverage of risks in this  
8                   State:
- 9                   (a) The amount of investments of each  
10                  type of funds;
- 11                  (b) The types of investments of all of  
12                  these funds; and
- 13                  (c) The annual income amounts, before  
14                  taxes, generated by the aggregate of  
15                  these investments;
- 16                  (3) The gross rate of return on admitted  
17                  assets;
- 18                  (4) The amount of dividends or the equiva-  
19                  lent allowed or returned to policyholders,  
20                  members or subscribers;
- 21                  (5) The aggregate annual expenses allocable  
22                  to the coverage of risks in this State,  
23                  including acquisition and field supervision  
24                  expenses, taxes, licenses and fees, other  
25                  than federal income tax, and general  
26                  expenses, each stated separately. Safety  
27                  engineering expense and loss control ser-  
28                  vices' expense shall be stated separately  
29                  under general expense;
- 30                  (6) The aggregate annual losses and loss  
31                  adjustment expense allocable to the coverage  
32                  of risks in this State;
- 33                  (7) The total loss reserves for this cover-  
34                  age being held at the beginning and end of  
35                  each calendar year and the annual paid  
36                  losses, including methods and interest rates  
37                  used in determining present value for the  
38                  reserves to which they apply; and

1           (8) The changes and improvements instituted  
2           in loss control and employee safety engi-  
3           neering;

4           B. For each risk classification:

5           (1) The rate presently applicable to the  
6           classification;

7           (2) The rate proposed for the classifica-  
8           tion;

9           (3) Loss experience in this State for each  
10          of the 3 most recent years available,  
11          including, in each classification, payroll,  
12          number of serious workers' compensation  
13          cases, number of nonserious cases, the  
14          losses, including medical expenses incurred  
15          with respect to each type of case, loss ad-  
16          justment expense and the total of all losses  
17          and expenses incurred; and

18          (4) The information required by this para-  
19          graph shall be presented in tabular form;

20          C. If data reported is determined by percentage  
21          factors, rather than actual expense, there shall  
22          be stated an explanation of the basis of the fac-  
23          tors used;

24          D. Statements or exhibits that reasonably sub-  
25          stantiate assumptions, methodology or calcula-  
26          tions used in support of the proposed rates or to  
27          generate the information or data in the filing;  
28          and identification of any of those that are known  
29          or believed to be contrary to established policy  
30          of the superintendent; and

31          E. Any other information required to be included  
32          by the superintendent.

33           4. Aggregate data. Aggregate expense data,  
34           annual loss and loss adjustment expense data and loss  
35           experience data required to be reported under subsec-  
36           tion 3, paragraph A, subparagraphs (5) and (6) and  
37           paragraph B, subparagraph (3) shall be based on  
38           expense and experience data pertaining to this State,

1 except as otherwise provided in this subsection. The  
2 profit factor used in establishing the rates  
3 requested, the rate of return on the investment allo-  
4 cable to the coverage of risks in this State repre-  
5 sented by that profit factor, and the facts, assump-  
6 tions and calculations employed to derive that profit  
7 factor and rate of return shall also be reported in  
8 the aggregate.

9 A. To the extent that the Maine expense and  
10 experience data is not fully credible, the super-  
11 intendent may allow reporting of and consider  
12 data from outside this State.

13 B. Aggregate loss experience data shall:

14 (1) Include and be categorized as required  
15 in subsection 3, paragraph B, subparagraph  
16 (3); and

17 (2) Be presented in tabular form. The  
18 tables shall indicate, with respect to each  
19 classification, the relative weight given to  
20 experience in this State and to national  
21 experience in determining the applicable  
22 rate.

23 5. Additional information. The superintendent  
24 may require, at any time, any additional information  
25 he deems necessary and may reasonably extend the time  
26 periods established in subsection 9 to allow time to  
27 provide that information.

28 6. Standard for approval. The provisions of  
29 this subsection apply to approval or disapproval of  
30 rate filings.

31 A. To approve a rate filing, the superintendent  
32 shall find that, from the filing and sworn testi-  
33 mony, the rating organization or insurer has  
34 established, in addition to all other require-  
35 ments, that:

36 (1) The proposed rates are just and reason-  
37 able and not excessive, inadequate or  
38 unfairly discriminatory;

1                   (2) The profit factor used in establishing  
2                   the rate requested will produce only a just  
3                   and reasonable return on investment allocable  
4                   to the coverage of risks in this State;  
5                   and

6                   (3) The reported loss reserves, including  
7                   the discount rates applied to those  
8                   reserves, are reasonable.

9                   B. In determining if the proposed rates are just  
10                   and reasonable, the superintendent shall con-  
11                   sider:

12                   (1) The profit factor used in establishing  
13                   the rate requested and its relationship to  
14                   the return on the investment allocable to  
15                   the coverage of risks in this State;

16                   (2) The reported investment income earned  
17                   or realized from funds generated from busi-  
18                   ness in this State;

19                   (3) The reported loss reserves, including  
20                   the methods and the interest rates used in  
21                   determining the present value for reported  
22                   reserves;

23                   (4) Reported annual losses and loss adjust-  
24                   ment expenses;

25                   (5) The measures taken to contain costs,  
26                   including loss control, loss adjustment and  
27                   employee safety engineering programs;

28                   (6) The relationship of the aggregate  
29                   amount of operating expenses reported by all  
30                   companies to the annual operating expenses  
31                   reported in the filing and the annual insur-  
32                   ance expense exhibits filed by each company  
33                   with the bureau; and

34                   (7) The operating and management efficiency  
35                   of the companies.

1           C. The justness and reasonableness of rates  
2           shall be determined for the period in which the  
3           rates shall be in effect.

4           D. The rating organization or insurer shall have  
5           the burden of proving that the proposed rates  
6           meet the requirements of this section and Title  
7           24-A, chapters 23 and 25.

8           E. A rate filing may not be approved unless the  
9           superintendent finds that the information sup-  
10          plied in the filing and sworn testimony is accu-  
11          rate and sufficient to meet the requirements of  
12          this section.

13          7. Public record. A rate filing shall be a  
14          public record and shall be available for public  
15          review and inspection.

16          8. Information for parties and intervenors. A  
17          party or intervenor may make written application to  
18          the superintendent for an order that a rating orga-  
19          nization or insurer, which has presented a filing,  
20          produce any information relevant to whether the  
21          filing rates meet the requirements of this section  
22          and Title 24-A, except for information relating to a  
23          particular claim. If the rating organization or  
24          insurer fails to furnish the information within the  
25          time prescribed by the superintendent, the party or  
26          intervenor making the request may make written appli-  
27          cation to the superintendent for an order disapprov-  
28          ing the filing. If, after a hearing, the superinten-  
29          dent determines that the failure to furnish the  
30          information was without good cause, he shall issue an  
31          order for disapproval of the filing.

32          9. Public hearing. The superintendent shall  
33          hold a public hearing, as provided in Title 24-A,  
34          sections 229 and 235, on each filing. The public  
35          hearing shall be conducted not sooner than 30 days  
36          and not later than 120 days of the receipt of the  
37          rate filing by the Bureau of Insurance, unless he  
38          extends these limits under subsection 5. The super-  
39          intendent shall approve or disapprove that filing and  
40          state his findings in a written order issued within  
41          180 days from the receipt of the filings by the  
42          bureau, unless he extends this limit under subsection



1 5. If the superintendent denies a filing, any fur-  
2 ther filing shall be deemed to be a new filing, sub-  
3 ject to this public hearing requirement.

4 10. Subsequent filing. A rating organization or  
5 insurer may not file a rate filing within 180 days of  
6 receiving approval of a prior rate filing.

7 11. Procedures; rules. Subject to the applica-  
8 ble requirements of the Maine Administrative Proce-  
9 dure Act, Title 5, chapter 375, the superintendent  
10 may adopt rules establishing procedures for the  
11 administration of this section, including, but not  
12 limited to, procedures governing submission of peti-  
13 tions for intervenor status, prefiling of testimony  
14 and exhibits, information requests, subpoenas,  
15 prehearing conferences and conduct of hearings.

16 12. Costs. For the purpose of determining  
17 whether the filing meets the requirements of this  
18 section, the superintendent may employ staff person-  
19 nel and outside consultants. The reasonable costs  
20 related to the review of workers' compensation rate  
21 filings, including conduct of the hearing, shall be  
22 borne by the rating organizations or insurers making  
23 the filing.

24 STATEMENT OF FACT

25 The purpose of this new draft, like the original  
26 bill, is to clarify and strengthen the standards to  
27 be applied in the review and approval or disapproval  
28 of workers' compensation insurance rate requests.  
29 The new draft provides more detailed and specific  
30 filing information from insurance companies in a rate  
31 filing. In particular, it requires the reporting of  
32 specific detailed information from each insurance  
33 company that will provide the Superintendent of  
34 Insurance with the information necessary to determine  
35 a reasonable rate of return. The emphasis is to re-  
36 quire that the insurance companies reveal detailed  
37 information about their financial affairs and, where  
38 at all possible, that this information be provided on  
39 the basis of actual expenses and income in Maine.

1           The new draft, like the original bill, also  
2 clarifies that the standard for approving or disap-  
3 proving rate requests is fundamentally based on the  
4 overall rate of return from business in this State,  
5 including all types of income directly or indirectly  
6 derived from that business. As insurance companies  
7 have a large "float" of premium funds which may be  
8 held for extended periods, in various categories,  
9 before losses must be paid, the investment return,  
10 must be considered in reaching a fair rate of return.  
11 This new draft requires that adequate information be  
12 provided to allow the superintendent to consider such  
13 income and other factors that will be included in  
14 determining a reasonable rate of return.

15           The intent of the detailed provisions of this new  
16 draft is to require the review of workers' compensa-  
17 tion insurance rate requests to reach the same depth  
18 and sophistication as utility rate review does before  
19 the Public Utilities Commission. As experience has  
20 shown that the present statutory provisions have been  
21 used to raise difficulties in meeting such standards,  
22 this measure is intended to once again clarify the  
23 Legislature's intention that insurance companies have  
24 an affirmative obligation, when asking for a rate  
25 increase, to provide accurate and thorough informa-  
26 tion about all of their financial affairs that relate  
27 to their workers' compensation insurance business in  
28 this State.

29           The new draft clarifies or modifies a number of  
30 technical provisions in the bill, including provi-  
31 sions to assure that the use of rating organizations  
32 will still be allowed, and aggregate data used where  
33 appropriate. Under this version, rates established  
34 by the superintendent would constitute maximum rates,  
35 subject to competition below the approved rates. The  
36 superintendent is given express rule-making authority  
37 to govern the procedures in a rate filing, and  
38 authority to make reasonable time extensions when  
39 necessary to obtain additional information. The  
40 provision contained in the original bill prohibiting  
41 a new rate filing within 6 months after a filing has  
42 been approved or disapproved has been changed to pro-  
43 hibit such a refiling only after a filing has been  
44 approved.

1           Any additional costs incurred as a result of this  
2 new draft shall be borne by the rating organization  
3 or any insurer making the filing.

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