

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE
4

5 Legislative Document

No. 1062

6
7 H.P. 757

House of Representatives, March 20, 1985

8 Reference to the Committee on Labor suggested and 2,500 ordered
9 printed.

10 EDWIN H. PERT, Clerk

Presented by Representative McGowan of Canaan.

11 Cosponsored by Senator Diamond of Cumberland, Representative Joseph
of Waterville and Representative Brannigan of Portland.

12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-FIVE
16

17 AN ACT to Reform the Maine Workers'
18 Compensation System.
19

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

22 Sec. 1. 24-A MRSa c. 25, first 2 lines, are re-
23 pealed and the following enacted in their place:

24 CHAPTER 25

25 RATES AND RATING ORGANIZATIONS

26 SUBCHAPTER I

27 GENERAL PROVISIONS

28 Sec. 2. 24-A MRSa §2302, sub-§3, as enacted by
29 PL 1969, c. 132, §1, is repealed and the following
30 enacted in its place:

1 3. Workers' compensation. Workers' compensation
2 shall first be subject to sections 2331 to 2355, but
3 any other parts of this chapter not inconsistent with
4 those sections shall also apply.

5 Sec. 3. 24-A MRSA §2303, sub-§1, ¶C, as amended
6 by PL 1983, c. 17, is further amended to read:

7 C. Due consideration shall be given:

8 (1) To past and prospective loss experience
9 within and outside this State;

10 (2) To the conflagration and catastrophe
11 hazards;

12 (3) To a reasonable margin for underwriting
13 profit and contingencies;

14 (4) To dividends, savings or unabsorbed
15 premium deposits allowed or returned by in-
16 surers to their policyholders, members or
17 subscribers;

18 (5) To past and prospective expenses both
19 countrywide and those specially applicable
20 to this State;

21 (6) To all other relevant factors within
22 and outside this State; and

23 ~~(6-A) In the case of workers' compensation~~
24 ~~rates, consideration shall be given to the~~
25 ~~information required to be filed under Title~~
26 ~~39, section 22, subsections 2 and 3; and~~

27 (7) In the case of fire insurance rates,
28 consideration shall be given to the experi-
29 ence of the fire insurance business during a
30 period of not less than the most recent
31 5-year period for which such experience is
32 available.

33 Sec. 4. 24-A MRSA §2303, sub-§1, ¶F, as enacted
34 by PL 1983, c. 551, §1, is repealed.

35 Sec. 5. 24-A MRSA c. 25, sub-c. II is enacted to
36 read:

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SUBCHAPTER II

WORKERS' COMPENSATION COMPETITIVE RATING ACT

§2331. Title

This subchapter shall be known as the "Workers' Compensation Competitive Rating Act."

§2332. Purposes

The purposes of this Act are to:

1. Prohibit price fixing. Prohibit price fixing agreements and other anticompetitive behavior by insurers;

2. Protect policyholders. Protect policyholders and the public against the adverse effects of excessive, inadequate or unfairly discriminatory rates;

3. Promote price competition. Promote price competition among insurers so as to provide rates that are responsive to competitive market conditions;

4. Provide regulatory procedures. Provide regulatory procedures for the maintenance of appropriate data reporting systems;

5. Availability. Improve availability, fairness and reliability of insurance;

6. Cooperative action. Authorize essential cooperative action among insurers in the rate-making process and to regulate that activity to prevent practices that tend to substantially lessen competition or create a monopoly; and

7. Marketing practices. Encourage the most efficient and economic marketing practices.

§2333. Definitions

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

1 1. Advisory organization. "Advisory organiza-
2 tion" means any entity which either has 2 or more
3 member insurers or is controlled either directly or
4 indirectly by 2 or more insurers and which assists
5 insurers in rate-making related activities. Two or
6 more insurers having a common ownership or operating
7 in this State under common management or control con-
8 stitute a single insurer for the purpose of this def-
9 inition. Advisory organization does not include a
10 joint underwriting association, any actuarial or le-
11 gal consultant, any employee of an insurer or insur-
12 ers under common control or management or their em-
13 ployees or manager.

14 2. Classification system or classification.
15 "Classification system" or "classification" means the
16 plan, system or arrangement for recognizing differ-
17 ences in exposure to hazards among industries, occu-
18 pations or operations of insurance policyholders.

19 3. Competitive market. "Competitive market"
20 means a market which has not been found to be noncom-
21 petitive pursuant to section 2335.

22 4. Expenses. "Expenses" means that portion of
23 any rate attributable to acquisition, field supervi-
24 sion and collection expenses, general expenses and
25 taxes, licenses and fees.

26 5. Experience rating. "Experience rating" means
27 a rating procedure utilizing past insurance experi-
28 ence of the individual policyholder to forecast fu-
29 ture losses by measuring the policyholder's loss ex-
30 perience against the loss experience of policyholders
31 in the same classification to produce a prospective
32 premium credit, debit or unity modification.

33 6. Loss trending. "Loss trending" means any pro-
34 cedure for projecting developed losses to the average
35 date of loss for the period during which the policies
36 are to be effective.

37 7. Market. "Market" means the interaction be-
38 tween buyers and sellers of workers' compensation in-
39 surance within this State pursuant to this Act.

1 8. Noncompetitive market. "Noncompetitive mar-
2 ket" means a market for which there is a ruling in
3 effect pursuant to section 2335 that a reasonable de-
4 gree of competition does not exist.

5 9. Pure premium rate. "Pure premium rate" means
6 that portion of the rate which represents the loss
7 cost per unit of exposure, including loss adjustment
8 expense.

9 10. Rate. "Rate" means the cost of insurance per
10 exposure base unit, prior to any application of indi-
11 vidual risk variations based on loss or expense con-
12 siderations, and does not include minimum premiums.

13 11. Residual market mechanism. "Residual market
14 mechanism" means an arrangement, either voluntary or
15 mandated by law, involving participation by insurers
16 in the equitable apportionment among them of insur-
17 ance which may be afforded applicants who are unable
18 to obtain insurance through ordinary methods.

19 12. Schedule rating. "Schedule rating" is a pro-
20 cedure where the premium for an insured may be modi-
21 fied in accordance with rating rules to reflect char-
22 acteristics of the risk not reflected in its experi-
23 ence.

24 13. Statistical plan. "Statistical plan" means
25 the plan, system or arrangement used in collecting
26 data.

27 14. Superintendent. "Superintendent" means the
28 Superintendent of Insurance.

29 15. Supplementary rate information. "Supplemen-
30 tary rate information" means any manual or plan of
31 rates, classification system, rating schedule, mini-
32 imum premium, policy fee, rating rule, rating plan and
33 any other similar information needed to determine the
34 applicable premium for an insured.

35 16. Supporting information. "Supporting informa-
36 tion" means the experience and judgment of the filer
37 and the experience or data of other insurers or orga-
38 nizations relied on by the filer, the interpretation
39 of any statistical data relied on by the filer, de-

1 scriptions of methods used in making the rates and
2 any other similar information required to be filed by
3 the superintendent.

4 §2334. Scope of application

5 This Act applies to workers' compensation insur-
6 ance and employers' liability insurance written in
7 connection with workers' compensation insurance.

8 §2335. Competitive market

9 A competitive market is presumed to exist unless
10 the superintendent, after hearing, determines that a
11 reasonable degree of competition does not exist in
12 the market and the superintendent issues an order to
13 that effect. Such an order shall expire no later than
14 one year after issuance. In determining whether a
15 reasonable degree of competition exists, the superin-
16 tendent may consider relevant tests of workable com-
17 petition pertaining to market structure, market per-
18 formance and market conduct.

19 §2336. Rate standards

20 1. General. Rates shall not be excessive, inade-
21 quate or unfairly discriminatory.

22 2. Excessiveness. Standards of excessiveness
23 shall be as follows.

24 A. Rates in a competitive market are not exces-
25 sive.

26 B. Rates in a noncompetitive market or in a re-
27 sidual market are excessive if they are likely to
28 produce a long-run profit that is unreasonably
29 high for the insurance provided or if expenses
30 are unreasonably high in relation to services
31 rendered.

32 3. Inadequacy. Rates are not inadequate unless
33 clearly insufficient to sustain projected losses and
34 expenses and the use of these rates, if continued,
35 will endanger the solvency of the insurer or will
36 tend to unreasonably limit competition or tend to
37 create a monopoly in the market.

1 4. Unfair discrimination. Unfair discrimination
2 exists if, after allowing for practical limitations,
3 price differentials fail to reflect equitably the
4 differences in expected losses and expenses. A rate
5 is not unfairly discriminatory because different pre-
6 miums result for policyholders with like loss expo-
7 sures but different expenses, or like expenses but
8 different loss exposures, as long as the rate re-
9 fects the differences with reasonable accuracy.

10 §2337. Payment of dividends

11 1. Unfair discrimination. Nothing in this sub-
12 chapter prohibits or regulates the payment of divi-
13 dends, savings or unabsorbed premium deposits allowed
14 or returned by insurers to their policyholders, mem-
15 bers or subscribers, but in the payment of these divi-
16 dends there may be no unfair discrimination between
17 policyholders.

18 2. Dividend plan not a rating plan. A plan for
19 the payment of dividends, savings or unabsorbed pre-
20 mium deposits allowed or returned by insurers to
21 their policyholders, members or subscribers is not
22 considered a rating plan or system.

23 §2338. Rating criteria

24 In determining whether rates comply with the
25 excessiveness standard in a noncompetitive market,
26 the inadequacy standard and the unfair discrimination
27 standard, the following criteria shall apply.

28 1. Basic factors in rates. Due consideration may
29 be given to past and prospective loss and expense ex-
30 perience within and outside of this State, to catas-
31 trophe hazards and contingencies, to events or trends
32 within and outside of this State, to loadings for
33 leveling premium rates over time for dividends or
34 savings to be allowed or returned by insurers to
35 their policyholders, members or subscribers and to
36 all other relevant factors, including judgment.

37 2. Expenses. The expense provisions included in
38 the rates to be used by an insurer shall reflect the
39 operating methods of the insurer and, so far as it is
40 credible, its own actual and anticipated expense ex-
41 perience.

1 3. Profits. The rates may contain provisions for
2 contingencies and an allowance permitting a reason-
3 able profit. In determining the reasonableness of
4 profit, consideration shall be given to all invest-
5 ment income attributable to premiums and the reserves
6 associated with those premiums.

7 §2339. Uniform administration of classifications;
8 reporting of rates and other information

9 1. Uniform classification system. Every workers'
10 compensation insurer, including self-insurers, shall
11 adhere to a uniform classification system and uniform
12 experience rating plan filed with the superintendent
13 by an advisory organization designated by the super-
14 intendent and subject to his disapproval. An insurer
15 may develop subclassifications of the uniform classi-
16 fication system upon which a rate may be made, pro-
17 vided that the subclassifications must be filed with
18 the superintendent 30 days prior to their use. The
19 superintendent may disapprove subclassifications if
20 the insurer fails to demonstrate that the data pro-
21 duced may be reported consistent with the uniform
22 statistical plan and classification system or if the
23 proposed subclassification is not reasonably related
24 to the exposure, is not adequately defined, has not
25 been shown to distinguish among insureds based on the
26 potential for or hazard to loss, or is likely to be
27 unfairly discriminatory.

28 2. Statistical advisory organization. The super-
29 intendent shall designate an advisory organization to
30 assist him in gathering, compiling and reporting rel-
31 evant statistical information. Every workers' compen-
32 sation insurer shall record and report its workers'
33 compensation experience to the designated advisory
34 organization as set forth in the uniform statistical
35 plan approved by the superintendent.

36 3. Experience reporting rules. The designated
37 advisory organization shall develop and file manual
38 rules, subject to the approval of the superintendent,
39 reasonably related to the recording and reporting of
40 data pursuant to the uniform statistical plan, uni-
41 form experience rating plan and the uniform classifi-
42 cation system. Every workers' compensation insurer
43 shall adhere to the approved manual rules and experi-

1 ence rating plan in writing and reporting its busi-
2 ness. No insurer may agree with any other insurer or
3 with an advisory organization to adhere to manual
4 rules which are not reasonably related to the record-
5 ing and reporting of data pursuant to the uniform
6 classification system or the uniform statistical
7 plan.

8 §2340. Filing of rates and other rating information

9 1. Filings as to competitive markets. In a com-
10 petitive market, every insurer shall file with the
11 superintendent all rates and supplementary informa-
12 tion which are to be used in this State, except as
13 provided in section 2339. The rates and supplementary
14 rate information shall be filed not later than 5 days
15 after the effective date. An insurer may adopt by
16 reference, with or without deviation, the rates and
17 supplementary rate information filed by another in-
18 surer. If the superintendent finds, after a hearing,
19 that an insurer's rates require closer supervision
20 because of the insurer's financial condition or un-
21 fairly discriminatory rating practices, the insurer
22 shall file with the superintendent at least 30 days
23 before the effective date all such rates and such
24 supplementary rate information and supporting infor-
25 mation as prescribed by the superintendent. Upon ap-
26 plication by the filer, the superintendent may autho-
27 riize an earlier effective date.

28 2. Prefiling in a noncompetitive market. In a
29 noncompetitive market, every insurer shall file with
30 the superintendent all rates and supplementary rate
31 information which are to be used in this State, ex-
32 cept as provided in section 2339. In addition, the
33 filing shall include:

34 A. For each of the 3 calendar years immediately
35 preceding the date of the filing for each company
36 included in the filing:

37 (1) The actual gross earned premium alloca-
38 ble to the coverage of risks in this State;

39 (2) For unearned premium, earned premium,
40 loss and loss expense reserve funds and cap-
41 ital and surplus subject to investment, al-

1 locable to the coverage of risks in this
2 State:

3 (a) The amount of investments of each
4 type of fund;

5 (b) The types of investments of all of
6 these funds; and

7 (c) The annual income amounts, before
8 taxes, generated by the aggregate of
9 these investments;

10 (3) The gross rate of return on admitted
11 assets;

12 (4) The amount of dividends or the equiva-
13 lent allowed or returned to policyholders,
14 members or subscribers;

15 (5) The aggregate annual expense allocable
16 to the coverage of risks in this State, in-
17 cluding acquisition and field supervision
18 expenses, taxes, licenses and fees, other
19 than federal income tax and general ex-
20 penditures, each stated separately. Safety engi-
21 neering expense and loss control services'
22 expense shall be stated separately under
23 general expense;

24 (6) The aggregate annual losses and loss
25 adjustment expense allocable to the coverage
26 of risks in this State;

27 (7) The total loss reserve for this cover-
28 age being held at the beginning and end of
29 each calendar year and the annual paid
30 losses, including methods and interest rates
31 used in determining present value for the
32 reserves to which they apply; and

33 (8) The changes and improvements instituted
34 in loss control and employee safety engi-
35 neering;

36 B. For each risk classification:

- 1 (1) The rate presently applicable to the
2 classification;
- 3 (2) The rate proposed for the classifica-
4 tion;
- 5 (3) Loss experience in this State for each
6 of the 3 most recent years available, in-
7 cluding, in each classification, payroll,
8 number of serious workers' compensation
9 cases, number of nonserious cases, the
10 losses, including medical expenses incurred
11 with respect to each type of case, loss ad-
12 justment expense and the total of all losses
13 and expenses incurred; and
- 14 (4) The information required by this para-
15 graph shall be presented in tabular form;
- 16 C. If data reported is determined by percentage
17 factors, rather than actual expense, an explana-
18 tion of the basis of the factors used;
- 19 D. The profit factor used in establishing the
20 rates requested, the rate of return on the in-
21 vestment allocable to the coverage of risks in
22 this State represented by that profit factor and
23 the assumptions and calculations employed to de-
24 rive that profit factor and rate of return;
- 25 E. Expense data, annual loss and loss adjustment
26 expense data and loss experience data required to
27 be reported under paragraph A, subparagraphs (5)
28 and (6) and paragraph B, subparagraph (3), based
29 on expense and experience data pertaining to this
30 State, except as otherwise provided in this sub-
31 section and subject to the following.
- 32 (1) To the extent that the State expense
33 and experience data is not fully credible,
34 the superintendent may allow reporting of
35 and consider data from outside this State
36 and from other insurers; and
- 37 (2) Aggregate loss experience data shall:

1 (a) Include and be categorized as re-
2 quired in paragraph B, subparagraph
3 (3); and

4 (b) Be presented in tabular form. The
5 tables shall indicate, with respect to
6 each classification, the relative
7 weight given to experience in this
8 State and to national experience in de-
9 termining the applicable rate;

10 F. Any other information required to be included
11 by the superintendent. The superintendent may re-
12 quire, at any time, any additional information he
13 deems necessary; and

14 Whenever a filing is not accompanied by such informa-
15 tion as required under this section, the superintend-
16 ent shall so inform the insurer as soon as possible
17 and the filing shall not be deemed to be made until
18 the information is furnished.

19 3. Filings open to inspection. All rates, sup-
20 plementary rate information and any supporting infor-
21 mation for risks filed under this Act shall, as soon
22 as filed, be open to public inspection at any reason-
23 able time. Copies may be obtained by any person on
24 request and upon payment of a reasonable charge.

25 §2341. Uniform experience rating plan

26 The experience rating plan shall contain reason-
27 able eligibility standards, provide adequate incen-
28 tives for loss prevention and shall provide for suf-
29 ficient premium differentials to encourage safety.
30 The uniform experience rating plan shall be the ex-
31 clusive means for eligible insureds of providing pro-
32 spective premium adjustment based upon the past claim
33 experience of an individual insured, but insurers may
34 file rating plans that provide for retrospective pre-
35 mium adjustments based on an insured's past experi-
36 ence.

37 For insureds not eligible for experience rating
38 because of insufficient premium, the superintendent
39 shall, by rule, mandate a minimum merit rating plan
40 which provides for credits or debits to the otherwise

1 applicable premium based on the actual claim experi-
2 ence of the insured.

3 §2342. Schedule rating

4 An insurer may file a schedule rating plan which
5 permits modification to the otherwise applicable pre-
6 mium after the application of experience rating, but
7 before any premium discounts and loss constants. The
8 superintendent may disapprove any schedule rating
9 plan, pursuant to section 2343, if the plan is un-
10 fairly discriminatory or if the filer has failed to
11 demonstrate that experience can be accurately re-
12 ported to an advisory organization. The superintend-
13 ent may, by rules, set maximum credits and debits and
14 other reasonable standards for schedule rating plans.

15 §2343. Disapproval of rates

16 1. Timing. A rate may be disapproved within the
17 following time limits.

18 A. A rate may be disapproved at any time subse-
19 quent to the effective date.

20 B. A rate subject to prefiling under section
21 2340 may also be disapproved before the effective
22 date.

23 C. A rate for a residual market in which insur-
24 ers are mandated by law to participate shall not
25 become effective until approved by the superin-
26 tendent, as provided in section 2350.

27 2. Bases. The bases of disapproval are as fol-
28 lows.

29 A. The superintendent may disapprove a rate if
30 the insurer fails to comply with the filing re-
31 quirements under section 2340.

32 B. The superintendent shall disapprove a rate
33 for use in a competitive market if he finds that
34 the rate is inadequate or unfairly discriminatory
35 under section 2336.

1 C. The superintendent shall disapprove a rate
2 for use in a noncompetitive market if he finds
3 that the rating organization or insurer has
4 failed to establish, in addition to all other re-
5 quirements, that:

6 (1) The proposed rates are just and reason-
7 able and not excessive, inadequate or un-
8 fairly discriminatory;

9 (2) The profit factor used in establishing
10 the rate requested will produce only a just
11 and reasonable return on investment allocable
12 to the coverage of risks in this State.

13 D. In determining if the proposed rates are just
14 and reasonable in a noncompetitive market, the
15 superintendent shall consider:

16 (1) The profit factor used in establishing
17 the rate requested;

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

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

25 (4) Reported annual losses and loss adjust-
26 ment expenses;

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

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

36 (7) The operating and management efficiency
37 of the company;

1 (8) The justness and reasonableness of
2 rates shall be determined for the period in
3 which the rates shall be in effect;

4 (9) The rating organization or insurer
5 shall have the burden of proving that the
6 proposed rates meet the requirements of this
7 section and any other applicable require-
8 ments of this Title; and

9 (10) A rate filing may not be approved un-
10 less the superintendent finds that the in-
11 formation supplied in the filing and sworn
12 testimony is accurate and sufficient to meet
13 the requirements of this section.

14 E. The superintendent shall disapprove a residu-
15 al market rate if he finds that the rate is ex-
16 cessive, inadequate or unfairly discriminatory.

17 3. Disapproval procedure; order; interim rates.
18 The superintendent may disapprove rates in accordance
19 with the following procedures.

20 A. Disapproval procedure. The procedure for dis-
21 approval shall be as follows.

22 (1) If the superintendent finds that a rea-
23 sonable degree of competition does not exist
24 in a market in accordance with section 2335,
25 he may require that the insurers in that
26 market file supporting information in sup-
27 port of existing rates. If the superintend-
28 ent believes that the rates may violate any
29 of the requirements of this Act, he shall
30 call a hearing prior to any disapproval.

31 (2) If the superintendent believes that
32 rates in a competitive market violate the
33 inadequacy or unfair discrimination standard
34 in section 2336 or any other applicable re-
35 quirement of this Act, he may require that
36 the insurers in that market file supporting
37 information in support of existing rates.
38 If, after reviewing the supporting rate in-
39 formation, the superintendent continues to
40 believe that the rates may violate these re-

1 quirements, he shall call a hearing prior to
2 any disapproval.

3 (3) The superintendent may disapprove,
4 without hearing, rates prefiled pursuant to
5 section 2340 that have not become effective.
6 The insurer whose rates have been disap-
7 proved shall be given a hearing upon a writ-
8 ten request made within 30 days after the
9 disapproval order.

10 (4) Every insurer or advisory organization
11 shall provide within this State reasonable
12 means whereby any person aggrieved by the
13 application of its filings may be heard on
14 written request to review the manner in
15 which the rating system has been applied in
16 connection with the insurance afforded or
17 offered. If the insurer or advisory organi-
18 zation fails to grant or reject the request
19 within 30 days, applicants may proceed in
20 the same manner as if the application had
21 been rejected. Any party affected by the ac-
22 tion of the insurer or advisory organization
23 on the request may, within 30 days after
24 written notice of the action, appeal to the
25 superintendent who, after a hearing held
26 upon not less than 10 days' written notice
27 to the appellant and to the insurer or ad-
28 visory organization, may affirm, modify or
29 reverse the action.

30 B. If the superintendent disapproves a rate, the
31 superintendent shall issue an order specifying in
32 what respects it fails to meet the requirements
33 of this Act and stating when, within a reasonable
34 period thereafter, the rate shall be discontinued
35 for any policy issued or renewed after a date
36 specified in the order. The order shall be issued
37 within 30 days after the close of the hearing or
38 within such reasonable time extension as the su-
39 perintendent may fix. The order may include a
40 provision for premium adjustment for the period
41 after the effective date of the order for poli-
42 cies in effect on that date.

1 C. Whenever an insurer has no legally effective
2 rates as a result of the superintendent's disap-
3 approval of rates or other act, the superintendent
4 shall on request of the insurer specify interim
5 rates for the insurer that are high enough to
6 protect the interests of all parties and may order
7 that a specified portion of the premiums be
8 placed in an escrow account approved by him. When
9 new rates become legally effective, the superin-
10 tendent shall order the escrowed funds or any
11 overcharge in the interim rates to be distributed
12 appropriately, except that refunds of less than
13 \$10 per policyholder shall not be required.

14 §2344. Monitoring competition

15 In determining whether or not a competitive mar-
16 ket exists, pursuant to section 2335, the superin-
17 tendent shall monitor the degree of competition in
18 this State. In doing so, he shall utilize existing
19 relevant information, analytical systems and other
20 sources, cause or participate in the development of
21 new relevant information, analytical systems and oth-
22 er sources or rely on some combination thereof. These
23 activities may be conducted internally within the in-
24 surance bureau, in cooperation with other state in-
25 surance departments, through outside contractors and
26 in any other appropriate manner.

27 §2345. Licensing advisory organizations

28 1. License required. No advisory organization
29 may provide any service relating to the rates of any
30 insurance subject to this Act, and no insurer may
31 utilize the services of such organization for such
32 purposes unless the organization has obtained a li-
33 cence under subsection 3.

34 2. Availability of services. No advisory organi-
35 zation may refuse to supply any services for which it
36 is licensed in this State to any insurer authorized
37 to do business in this State and offering to pay the
38 fair and usual compensation for the services.

39 3. Licensing. The following standards shall ap-
40 ply to the granting and maintaining of a license as
41 an advisory organization.

1 A. In addition to the requirements contained in
2 section 2321, the advisory organization shall in-
3 clude in its application the following:

4 (1) A statement showing its technical qual-
5 ifications for acting in the capacity for
6 which it seeks a license; and

7 (2) Any other relevant information and doc-
8 uments that the superintendent may require.

9 B. Every advisory organization which has applied
10 for a license shall notify the superintendent of
11 every material change in the facts or in the doc-
12 uments on which its application was based. Any
13 amendment to a document filed under this section
14 shall be filed at least 30 days before it becomes
15 effective.

16 C. If the superintendent finds that the appli-
17 cant and the natural persons through whom it acts
18 are competent, trustworthy and technically quali-
19 fied to provide the services proposed and that
20 all requirements of law are met, he shall issue a
21 license specifying the authorized activity of the
22 applicant. He shall not issue a license if the
23 proposed activity would tend to create a monopoly
24 or to substantially lessen competition in the
25 market.

26 D. Licenses issued pursuant to this section
27 shall remain in effect until the licensee with-
28 draws from the State or until the license is sus-
29 pended or revoked. The license of an advisory or-
30 ganization which does not comply with the re-
31 quirements and standards of this Act may be sus-
32 pended or revoked by the Administrative Court.

33 §2346. Insurers and advisory organizations; prohib-
34 ited activity

35 1. Arrangements restraining competition. No in-
36 surer or advisory organization may make any arrange-
37 ment with any other insurer, advisory organization or
38 other person which has the purpose or effect of re-
39 straining trade unreasonably or of substantially
40 lessening competition in the business of insurance.

1 2. Adherence to agreed rates or rules. No insurer
2 may agree with any other insurer or with an advisory
3 organization to adhere to or use any rate, rating
4 plan, other than the uniform experience rating plan,
5 or rating rule, except as needed to comply with the
6 requirements of section 2339.

7 3. Finding of agreement. The fact that 2 or more
8 insurers, whether or not members or subscribers of an
9 advisory organization, use, consistently or
10 intermittently, the same rules, rating plans, rating
11 schedules, rating rules, policy forms, rate classifi-
12 cations, underwriting rules, surveys or inspections
13 or similar materials is not sufficient in itself to
14 support a finding that an agreement exists.

15 4. Common ownership or management. Two or more
16 insurers having a common ownership or operating in
17 this State under common management or control may act
18 in concert between or among themselves with respect
19 to any matters pertaining to those authorized in this
20 Act as if they constituted a single insurer.

21 §2347. Advisory organizations; prohibited activity

22 In addition to other prohibitions contained in
23 this Act, except as specifically permitted under sec-
24 tion 2348, no advisory organization may:

25 1. Rating recommendations. Compile or distribute
26 recommendations relating to rates that include ex-
27 penses, other than loss adjustment expenses, or prof-
28 it; or

29 2. Rate filings. File rates, supplementary rate
30 information or supporting information on behalf of an
31 insurer.

32 §2348. Advisory organizations; permitted activity

33 Any advisory organization, in addition to other
34 activities not prohibited, may:

35 1. Develop statistical plans. Develop statisti-
36 cal plans, including class definitions;

37 2. Collect data. Collect statistical data from
38 members, subscribers or any other source;

1 3. Prepare pure premiums. Prepare and distribute
2 pure premium rate data, adjusted for loss development
3 and loss trending, in accordance with its statistical
4 plans. The data and adjustments should be in suffi-
5 cient detail so as to permit insurers to modify the
6 pure premiums based on their own rating methods or
7 interpretations of underlying data;

8 4. Prepare rating rules. Prepare and distribute
9 manuals of rating rules and rating schedules that do
10 not contain any rules or schedules containing final
11 rates or permitting calculation of final rates with-
12 out information outside the manuals;

13 5. Distribute information. Distribute informa-
14 tion that is filed with the superintendent and open
15 to public inspection;

16 6. Conduct research. Conduct research and col-
17 lect statistics in order to discover, identify and
18 classify information relating to causes or prevention
19 of losses;

20 7. File policy forms. Prepare and file policy
21 forms and endorsements and consult with members, sub-
22 scribers and others relative to their use and appli-
23 cation;

24 8. Distribute pricing information. Collect, com-
25 pile and distribute past and current prices of indi-
26 vidual insurers if the information is made available
27 to the general public;

28 9. Evaluate benefit changes. Conduct research
29 and collect information to determine the impact of
30 benefit level changes on pure premium rates;

31 10. Calculate experience rating modifications.
32 Prepare and distribute rules and rating values for
33 the uniform experience rating plan. Calculate and
34 disseminate individual risk premium modifications;
35 and

36 11. Assist insurers. Assist an individual insur-
37 er to develop rates, supplementary rate information
38 or supporting information when so authorized by the
39 individual insurer.

1 §2349. Advisory organizations; filing requirements

2 Every advisory organization shall file with the
3 superintendent every pure premium rate, every manual
4 of rating rules, every rating schedule and every
5 change or amendment or modification of any rate, man-
6 ual or schedule proposed for use in this State no
7 more than 5 days after it is distributed to members,
8 subscribers or others.

9 §2350. Residual market mechanism

10 All insurers authorized to write workers' compen-
11 sation and employers' liability insurance shall partici-
12 partate in a plan providing for the equitable appor-
13 tionment among them of insurance which may be af-
14 forded applicants who are in good faith entitled to,
15 but who are unable to procure, the insurance through
16 ordinary methods. A plan shall be submitted for the
17 superintendent's approval within 60 days of the ef-
18 fective date of this Act. The rates, supplementary
19 rate information and policy forms to be used in such
20 a plan and any future modifications shall be submit-
21 ted to the superintendent for approval at least 30
22 days prior to their effective date. The plan may pro-
23 vide for a system of surcharges related to adverse
24 claim experience. The superintendent may require, at
25 any time, any additional information he deems neces-
26 sary and may reasonably extend the requested effec-
27 tive date to allow time to provide that information.
28 The filed rates, supplementary rate information or
29 policy forms shall not take effect unless approved by
30 the superintendent.

31 The superintendent shall disapprove any filing
32 that does not meet the requirements of section 2336.
33 In disapproving a filing made pursuant to this sec-
34 tion, the superintendent shall have the same authori-
35 ty and follow the same procedure as in disapproving a
36 filing pursuant to section 2343. The designated ad-
37 visory organization may make and file the plan of op-
38 eration, rates, rating plans, rules and policy forms
39 under this section.

40 §2351. Examinations

1 1. Examination by superintendent. The superin-
2 tendent may examine any insurer, advisory organiza-
3 tion or residual market mechanism as he deems neces-
4 sary to ascertain compliance with this Act.

5 2. Maintenance of records. Every insurer, advis-
6 ory organization and residual market mechanism shall
7 maintain reasonable records of the type and kind rea-
8 sonably adapted to its method of operation containing
9 its experience or the experience of its members, in-
10 cluding the data, statistics or information collected
11 or used by it in its activities. These records shall
12 be available at all reasonable times to enable the
13 superintendent to determine whether the activities of
14 any advisory organization, insurer or association
15 comply with the provisions of this Act. These records
16 shall be maintained in an office within this State
17 and shall be made available to the superintendent for
18 examination or inspection at any time upon reasonable
19 notice.

20 3. Cost paid by examined party. The reasonable
21 cost of an examination made pursuant to this section
22 shall be paid by the examined party upon presentation
23 of a detailed account of these costs.

24 4. Other state examination reports. In lieu of
25 any such examination, the superintendent may accept
26 the report of an examination by the insurance super-
27 visory official of another state, made pursuant to
28 the laws of that state.

29 §2352. Penalties

30 1. Civil penalties. Any person or organization
31 who has violated this Act shall be assessed a civil
32 penalty of not more than \$1,000 for each violation,
33 except that, where the violation is willful, a civil
34 penalty of not more than \$10,000 shall be assessed
35 for each violation. These penalties may be in addi-
36 tion to any other penalty provided by law.

37 2. Separate violations. For purposes of this
38 section, any insurer using a rate for which the in-
39 surer has failed to file the rate, supplementary rate
40 information or supporting information, as required by
41 this Act, commits a separate violation for each day
42 the failure continues.

1 3. Suspension or revocation of license. The li-
2 cence of any advisory organization or insurer which
3 fails to comply with an order of the superintendent
4 within the time limit specified by the order, or any
5 extension which the superintendent may grant, may be
6 suspended or revoked.

7 §2353. Judicial review

8 1. Decisions subject to judicial review. Any or-
9 der, regulation or decision of the superintendent
10 made after a hearing shall be subject to judicial re-
11 view in accordance with section 236.

12 2. Requests for hearing. Upon request of any in-
13 surer or organization to which the superintendent has
14 directed an order made without a hearing, the super-
15 intendent shall grant a hearing within 20 days of the
16 request. Within 15 days after the hearing, the super-
17 intendent shall affirm, reverse or modify the previ-
18 ous action, specifying the reasons therefor.

19 §2354. Rate change limitations

20 During the first 12-month period after the effec-
21 tive date of this Act, each insurer's rates shall not
22 exceed the workers' compensation rates approved by
23 the superintendent effective March 2, 1981. During
24 the 2nd and 3rd 12-month periods after the effective
25 date of this Act, each insurer's rates shall not ex-
26 ceed the rates approved by the superintendent effec-
27 tive March 2, 1981, increased by 10% in the 2nd
28 12-month period and an additional 10% in the 3rd
29 12-month period.

30 §2355. Costs

31 For the purpose of determining whether a filing
32 meets the requirements of this Act and to assist him
33 in monitoring competition, the superintendent may em-
34 ploy staff personnel and outside consultants. The
35 reasonable costs related to the review of workers'
36 compensation rate filings, including conduct of the
37 hearing, shall be borne by the insurer making the
38 filing. The reasonable costs related to monitoring
39 competition may be ratably assessed against all in-
40 surers writing workers' compensation in this State.

1 Sec. 6. 39 MRSA §22-B, as amended by PL 1983, c.
2 659, §§1 and 2, is repealed.

3 Sec. 7. 39 MRSA §22-C, as reallocated by PL
4 1983, c. 816, Pt. B, §23, is repealed.

5 Sec. 8. 39 MRSA §54, as amended by PL 1983, c.
6 479, §8, is further amended to read:

7 §54. Compensation for total incapacity

8 While the incapacity for work resulting from the
9 injury is total, the employer shall pay the injured
10 employee a weekly compensation equal to 2/3 his aver-
11 age gross weekly wages, earnings or salary, but not
12 more than ~~166 2/3%~~ 110% of the average weekly wage in
13 the State as computed by the Employment Security Com-
14 mission; nor less than \$25 weekly; and such weekly
15 compensation shall be adjusted annually ~~so that it~~
16 ~~continues to bear the same percentage relationship to~~
17 ~~the average weekly wage in the State as computed by~~
18 ~~the Employment Security Commission, as it did at the~~
19 ~~time of the injury by the lesser of the percentage~~
20 ~~increase, if any, by which the state average weekly~~
21 ~~wage as computed by the Employment Security Commis-~~
22 ~~sion exceeds the state average weekly wage for the~~
23 ~~prior year or 5%. In the following cases it shall,~~
24 for the purposes of this Act, be conclusively pre-
25 sumed that the injury resulted in permanent total in-
26 capacity; the total and irrevocable loss of sight of
27 both eyes, the loss of both hands at or above the
28 wrist, the loss of both feet at or above the ankle,
29 the loss of one hand and one foot, an injury to the
30 spine resulting in permanent and complete paralysis
31 of the arms or legs or an injury to the skull result-
32 ing in incurable imbecility or insanity. In the event
33 of such permanent total incapacity, the employer
34 shall pay the employee a weekly compensation equal to
35 2/3 his average gross weekly wage, earnings or sala-
36 ry, but not more than ~~166 2/3%~~ 110% of the average
37 weekly wage in the State as computed by the Employ-
38 ment Security Commission; nor less than \$25 weekly;
39 and such weekly compensation shall be adjusted annu-
40 ally ~~so that it continues to bear the same percentage~~
41 ~~relationship to the average weekly wage in the State~~
42 ~~as computed by the Employment Security Commission, as~~
43 ~~it did at the time of the injury by the lesser of the~~

1 percentage increase, if any, by which the state aver-
2 age weekly wage as computed by the Employment Securi-
3 ty Commission exceeds the state average weekly wage
4 for the prior year or 5%. If the totally incapaciti-
5 ated employee dies, as a result of this injury,
6 leaving dependents who were dependent upon his earn-
7 ings at the time of his injury, then payments shall
8 be made to the dependents in accordance with the proce-
9 dures established by section 58. The annual ad-
10 justment required by this section shall be made on
11 the anniversary date of the injury, except that,
12 where the injury occurred prior to July 1, 1983, or
13 where the effect of the ~~166 2/3%~~ 110% maximum is to
14 reduce the amount of compensation to which the claim-
15 ant would otherwise be entitled, the adjustment shall
16 be made annually on July 1st.

17 Whenever a program of vocational or educational
18 rehabilitation has been inaugurated, either by ap-
19 proved agreement or commission decree, the employer
20 shall pay the injured employee, in addition to com-
21 pensation, if he is totally or partially incapaciti-
22 tated, a sum not to exceed \$35 per week for
23 sustenance and travel as may be determined by the
24 commission during the period of such rehabilitation
25 within the limitations as prescribed in this section
26 and section 52.

27 Sec. 9. 39 MRSA §55, as amended by PL 1983, c.
28 479, §9, is further amended to read:

29 §55. Compensation for partial incapacity

30 While the incapacity for work resulting from the
31 injury is partial, the employer shall pay the injured
32 employee a weekly compensation equal to 2/3 the dif-
33 ference, due to the injury, between his average gross
34 weekly wages, earnings or salary before the injury
35 and the weekly wages, earnings or salary which he is
36 able to earn thereafter, but not more than ~~166 2/3%~~
37 110% of the average weekly wage in the State as com-
38 puted by the Employment Security Commission; and such
39 weekly compensation shall be adjusted annually so
40 that it continues to bear the same percentage rela-
41 tionship to the average weekly wage in the State as
42 computed by the Employment Security Commission, as it
43 did at the time of the injury by the lesser of the

1 percentage increase, if any, by which the state aver-
2 age weekly wage as computed by the Employment Securi-
3 ty Commission exceeds the state average weekly wage
4 for the prior year or 5%. The annual adjustment re-
5 quired by this section shall be made on the anniver-
6 sary date of the injury, except that, where the in-
7 jury occurred prior to July 1, 1983, or where the ef-
8 fect of the ~~166 2/3%~~ 110% maximum is to reduce the
9 amount of compensation to which the claimant would
10 otherwise be entitled, the adjustment shall be made
11 annually on July 1st.

12 Sec. 10. 39 MRSA §56, first ¶, as amended by PL
13 1979, c. 541, Pt. A, §§279 and 280, is further
14 amended to read:

15 In addition to the benefits provided for in sec-
16 tions 54 and 55, when an employee sustains an injury
17 which is included in the following schedule, the in-
18 capacity in each case shall be deemed to be total for
19 the period specified and the injured employee shall
20 receive a lump sum payment for said injury which
21 shall be determined by multiplying ~~the amount to~~
22 ~~which he would be entitled weekly for total incapaci-~~
23 ~~ty as determined under section 54, an amount equal to~~
24 2/3 of the state average weekly wage as computed by
25 the Employment Security Commission by the period of
26 presumed total incapacity set forth in this section.
27 The specific periods of presumed total incapacity be-
28 cause of injuries specified in this section shall be
29 as follows:

30 Sec. 11. 39 MRSA §56-A, first ¶, as enacted by
31 PL 1971, c. 465, §1, is amended to read:

32 In addition to the benefits provided for in sec-
33 tions 54 and 55, when an employee sustains an injury
34 which is included in the following schedule, the in-
35 capacity in each case shall be deemed to be total for
36 the period specified and the injured employee shall
37 receive a lump sum payment for said injury which
38 shall be determined by multiplying ~~the amount to~~
39 ~~which he would be entitled weekly for total incapaci-~~
40 ~~ty as determined under section 54, an amount equal to~~
41 2/3 of the state average weekly wage as computed by
42 the Employment Security Commission by the period of

1 presumed total incapacity set forth in this section.
2 The specific periods of presumed total incapacity be-
3 cause of injuries specified in this section shall be
4 as follows:

5 Sec. 12. 39 MRSA §58, as amended by PL 1983, c.
6 479, §10, is further amended to read:

7 §58. Death benefit; apportionment

8 If death results from the injury, the employer
9 shall pay the dependents of the employee, dependent
10 upon his earnings for support at the time of his in-
11 jury, a weekly payment equal to 2/3 his average gross
12 weekly wages, earnings or salary, but not more than
13 ~~166 2/3%~~ 110% of the average weekly wage in the State
14 as computed by the Employment Security Commission;
15 nor less than \$25 weekly; from the date of death, un-
16 til such time as provided for in the following para-
17 graph. Such weekly compensation shall be adjusted an-
18 nually so that ~~it continues to bear the same percent-~~
19 ~~age relationship to the average weekly wage in the~~
20 ~~State as computed by the Employment Security Commis-~~
21 ~~sion, as it did at the time of the injury by the~~
22 ~~lesser of the percentage increase, if any, by which~~
23 ~~the state average weekly wage as computed by the Em-~~
24 ~~ployment Security Commission exceeds the state aver-~~
25 ~~age weekly wage for the prior year or 5%. The annual~~
26 ~~adjustment required by this section shall be made on~~
27 ~~the anniversary date of the injury, except that,~~
28 ~~where the injury occurred prior to July 1, 1983, or~~
29 ~~where the effect of the ~~166 2/3%~~ 110% maximum is to~~
30 ~~reduce the amount of compensation to which the claim-~~
31 ~~ant would otherwise be entitled, the adjustment shall~~
32 ~~be made annually on July 1st.~~

33 If the dependent of the employee to whom compen-
34 sation will be payable upon his death is the widow of
35 such employee, upon her death, remarriage or at the
36 time she becomes a dependent of another person, com-
37 pensation to her shall cease and the compensation to
38 which she would have been entitled thereafter, but
39 for such death, remarriage or dependency, shall be
40 paid to the child or children, if any, of the de-
41 ceased employee, including adopted and step-children,
42 under the age of 18 years, or over that age but phys-
43 ically or mentally incapacitated from earning, who

1 are dependent upon the widow at the time of her
2 death, remarriage or dependency. If the dependent is
3 the widower, upon his death, remarriage or at the
4 time he becomes a dependent of another person, the
5 remainder of the compensation which would otherwise
6 have been payable to him shall be payable to the
7 children above specified, if any, who at the time
8 thereof are dependent upon him. In case there is more
9 than one child thus dependent, the compensation shall
10 be divided equally among them. Except in the case of
11 dependents who are physically or mentally incapacitated
12 from earning, compensation payable to any dependent
13 child under the age of 18 years shall cease
14 upon such child's reaching the age of 18 years or
15 upon marriage.

16 If the employee leaves dependents only partly dependent
17 upon his earnings for support at the time of
18 his injury, the employer shall pay such dependents a
19 weekly compensation equal to the same proportion of
20 the weekly payments provided in this section for the
21 benefit of persons dependent, as the total amount
22 contributed by the employee to such partial dependents
23 for their support during the year prior to his
24 injury, bears to the earnings of the employee during
25 said period.

26 Sec. 13. 39 MRSA §62-B is enacted to read:

27 §62-B. Coordination of benefits

28 1. Application. This section applies when either
29 weekly or lump sum payments are made:

30 A. When weekly compensation is payable to an em-
31 ployee under section 54 or 55 for any period for
32 which he is receiving or has received old age in-
33 urance benefit payments under the United States
34 Social Security Act, United States Code, Title
35 42, Sections 301 to 1397f, or payments under an
36 employee benefit plan; and

37 B. When weekly compensation is payable to an
38 employee's spouse under section 58 for any period
39 for which the spouse is receiving or has received
40 old age insurance benefit payments which are
41 based on wages earned by the deceased employee

1 under the United States Social Security Act or
2 payments under an employee benefit plan which are
3 based upon or attributable to the deceased
4 employee's service with the employer.

5 2. Definitions. As used in this section, unless
6 the context indicates otherwise, the following terms
7 have the following meanings.

8 A. "After tax amount" means the gross weekly
9 amount of any old age insurance benefit or bene-
10 fit under an employee benefit plan, reduced by
11 the prorated weekly amount which would have been
12 paid, if any, in social security, federal income
13 and state income taxes, calculated on an annual
14 basis. The after tax amount of any benefits sub-
15 ject to income taxes shall be determined by using
16 the maximum number of dependents' allowances to
17 which the employee is entitled and the standard
18 deduction or zero bracket amount applicable to
19 the employee's filing status. The chairman of the
20 commission shall, by rule, adopt and publish ta-
21 bles governing the determination of after tax
22 amounts under this subsection.

23 B. "Employee benefit plan" means a self-
24 insurance disability plan, wage continuation
25 plan, disability insurance plan and a pension or
26 retirement plan which is funded or paid for by
27 the employer, in whole or in part. It does not
28 include disability insurance under the United
29 States Social Security Act.

30 3. Coordination of benefits. Benefit payments
31 subject to this section shall be reduced in accord-
32 ance with the following provisions.

33 A. The employer's obligation to pay weekly com-
34 ensation under section 54 or 55 shall be reduced
35 by:

36 (1) Fifty percent of the amount of old age
37 insurance benefits received or being re-
38 ceived under the United States Social Secu-
39 rity Act;

1 (2) The after tax amount of the payments
2 received or being received under an employee
3 benefit plan provided by the same employer
4 by whom benefits under section 54 or 55 are
5 payable if the employee did not contribute
6 directly to the plan; and

7 (3) The proportional amount, based upon the
8 ratio of an employer's contributions to the
9 total contributions, of the after tax amount
10 of the payments received or being received
11 by the employee under an employee benefit
12 plan provided by the same employer by whom
13 benefits under section 54 or 55 are payable
14 if the employee did contribute directly to
15 the plan.

16 B. The employer's obligation to pay weekly com-
17 pensation under section 58 to an employee's
18 spouse shall be reduced by:

19 (1) Fifty percent of the amount of old in-
20 surance benefit payments based upon wages
21 earned by the deceased employee under the
22 United States Social Security Act;

23 (2) The after tax amount of any payments
24 received or being received under an employee
25 benefit plan provided by the same employer
26 by whom benefits under section 58 are pay-
27 able if the employee did not contribute di-
28 rectly to the plan; and

29 (3) The proportional amount, based upon the
30 ratio of the employer's contributions to the
31 total contributions, of the after tax amount
32 of the payments received or being received
33 under an employee benefit plan provided by
34 the same employer by whom benefits under
35 section 58 are payable if the employee did
36 not contribute to the plan.

37 C. No reduction in weekly compensation may be
38 made as a result of any increase granted by the
39 United States Social Security Administration as a
40 cost-of-living adjustment.

1 4. Release of information. Within 14 days after
2 the date of the first payment of compensation under
3 section 54, 55 or 58, or 14 days after the date of
4 application for any benefits subject to coordination
5 under this section, whichever is later, the employee
6 or a deceased employee's spouse shall, upon request,
7 provide the employer with a certificate authorizing
8 the employer to obtain any benefit information neces-
9 sary to comply with this section. If, at any subse-
10 quent time, the employer is required to submit a new
11 certificate in order to receive that information, a
12 new certificate shall be provided upon request within
13 14 days. All certificates for the release of informa-
14 tion shall be in a form prescribed by the commission.
15 Failure of the employee to provide a properly exe-
16 cuted certificate shall allow the employer, with the
17 approval of the commission, to suspend all benefit
18 payments until the certificate is provided. Any bene-
19 fits so withheld shall be paid to the employee once
20 the required certificate is provided, subject to any
21 reductions authorized by this section.

22 5. Reports. Any employer making a reduction un-
23 der this section shall immediately report to the com-
24 mission the amount of the reduction to be taken and,
25 as required by the commission, furnish satisfactory
26 proof of the basis for the reduction.

27 Sec. 14. 39 MRSA §100-B is enacted to read:

28 §100-B. Mandatory review of incapacity

29 1. Mandatory review by commission. An employee
30 who has received benefits pursuant to any compensa-
31 tion payment scheme required by this Act shall demon-
32 strate his continuing entitlement to those benefits
33 when he has received these benefits for a continuous
34 period of 12 months and again when he has received
35 these benefits for a total continuous period of 36
36 months. The employee may demonstrate continuing
37 entitlement by the following means.

38 A. An employee who is receiving compensation for
39 total physical incapacity shall file with the
40 commission a report from his treating health care
41 provider stating that the employee continues to
42 experience total medical disability.

1 B. An employee who is receiving compensation for
2 total incapacity for work as a result of partial
3 physical incapacity combined with an inability to
4 find suitable employment shall file with the com-
5 mission a report from his treating health care
6 provider stating that the employee's partial
7 physical incapacity is continuing, together with
8 certification from the Maine Job Service that
9 there are no jobs in the employee's community
10 which the employee could perform and for which he
11 has not applied.

12 C. An employee who is receiving compensation for
13 partial incapacity for work because of partial
14 physical incapacity shall file with the commis-
15 sion a report from his treating health care
16 provider stating that the employee's partial
17 physical disability is continuing.

18 The employee shall send copies of the reports de-
19 scribed in this section to his employer.

20 2. Procedure. Upon receipt of the reports set
21 forth in subsection 1, the employer shall accept or
22 controvert the employee's continuing entitlement to
23 compensation by filing a form prescribed by commis-
24 sion regulation. If the commission receives a notice
25 of controversy, it shall schedule an informal confer-
26 ence as proved in section 94-B. The commissioner con-
27 ducting the informal conference shall render an ad-
28 visory opinion as to whether the employee is entitled
29 to continuing compensation. The commissioner may is-
30 sue an order modifying or suspending the compensa-
31 tion. If there is further controversy following the
32 commissioner's order, any party may file a petition
33 for review. The commissioner's order shall be final
34 unless a petition for review is filed within 30 days
35 from the date the order is issued.

36 3. Penalty. When an employee who has received
37 compensation for a continuous period of 12 months or
38 36 months fails to file the reports required in sub-
39 section 1 within one month after the 12-month or
40 36-month anniversary date, the commission may issue
41 an order suspending compensation.

42 Sec. 15. 39 MRSA §103-B, sub-§4, as enacted by
43 PL 1981, c. 514, §6, is amended to read:

1 4. ~~Costs. Costs~~ If the employee prevails costs
2 of appeal shall be allowed, including the record, and
3 including reasonable attorneys' fees as provided for
4 under section 110. No attorney who represents an em-
5 ployee who prevails in an appeal before the division
6 may recover any fee from that client for that repre-
7 sentation. Any attorney who violates this paragraph
8 shall lose his fee and is liable in a court suit to
9 pay damages to the client equal to 2 times the fee
10 charged that client.

11 Sec. 16. 39 MRSA §103-C, sub-§4, as enacted by
12 PL 1981, c. 514, §6, is amended to read:

13 4. Costs. In all cases of appeal to the Law
14 Court in which the employee prevails, it may order a
15 reasonable allowance to be paid to the employee by
16 the employer for expenses incurred in the proceedings
17 of the appeal, including the record, but not includ-
18 ing expenses incurred in other proceedings in the
19 case. Reasonable attorneys' fees shall be allowed as
20 provided for under section 110. No attorney who
21 represents an employee who prevails in an appeal be-
22 fore the court may recover any fee from that client
23 for that representation. Any attorney who violates
24 this paragraph shall lose his fee and is liable in a
25 court suit to pay damages to the client equal to 2
26 times the fee charged that client.

27 Sec. 17. 39 MRSA §104-B, as repealed and re-
28 placed by PL 1981, c. 474, §4, is repealed and the
29 following enacted in its place:

30 §104-B. Multiple injuries; apportionment of liabili-
31 ty

32 If an employee has sustained more than one injury
33 while employed by different employers, or if any em-
34 ployee has sustained more than one injury while em-
35 ployed by the same employer and that employer was in-
36 sured by another insurer when the subsequent injury
37 or injuries occurred, the insurer providing coverage
38 at the time of the last injury shall be responsible
39 to the employee for all benefits payable under this
40 Act.

1 The employer or insurer responsible to the em-
2 ployee for all benefits under this Act shall not be
3 entitled to an apportionment of liability or any con-
4 tribution from employers or insurers liable for ear-
5 lier work-related injuries.

6 Sec. 18. 39 MRSA §110, as amended by PL 1983, c.
7 479, §30, is repealed and the following enacted in
8 its place:

9 §110. Witness and attorneys' fees allowable

10 If an employee prevails in any proceeding involv-
11 ing a controversy under this Act, the commission or
12 commissioner may assess the employer costs of a rea-
13 sonable attorney's fee and witness fees whenever the
14 witness was necessary for the proper and expeditious
15 disposition of the case.

16 The employer may not be assessed costs of an at-
17 torney's fee attributable to services rendered prior
18 to one week after the informal conference under sec-
19 tion 94-B or, if the informal conference is waived,
20 services rendered prior to the date of that waiver,
21 unless a party adverse to the employee was so repre-
22 sentated at that stage.

23 No attorney representing an employee who prevails
24 in a proceeding under this Act may receive any fee
25 from that client for an appearance before the commis-
26 sion, including preparation for that appearance, ex-
27 cept as provided in section 94-B, subsection 3. Any
28 attorney who violates this paragraph shall lose his
29 fee and shall be liable in a court suit to pay dam-
30 ages to his client equal to 2 times the fee charged
31 for that client.

32 Sec. 19. 39 MRSA §112, as amended by PL 1977, c.
33 696, §409, is repealed.

34 Sec. 20. Effective date. This Act shall take ef-
35 fect January 1, 1986. This Act shall apply only as to
36 injuries occurring on and after January 1, 1986.

37

STATEMENT OF FACT

1 This bill establishes the Workers' Compensation
2 Competitive Rating Act. The purpose of this Act is
3 to change the regulation of workers' compensation in-
4 surance rates from a prior approval process, where
5 virtually all insurance companies charge the same
6 rates, to a competitive market where each company
7 must establish its own rates. The bill incorporates
8 many of the recommendations of the Special Study Com-
9 mission on Workers' Compensation Insurance. In that
10 report, the commission criticized the current system
11 because it produces a single set of rates for all in-
12 surers, encourages "back-door" competition rather
13 than "up-front" price competition, protects ineffi-
14 cient insurers and does not make dividend or premium
15 payment plans available to small employers. A com-
16 petitive rating environment would encourage up-front
17 price competition, reward efficient carriers and al-
18 low each carrier to reflect its own expense levels
19 and investment income in its individual insurance
20 rates.

21 This part of the bill is based on the National
22 Association of Insurance Commissioners' model compet-
23 itive rating bill, designed specifically for workers'
24 compensation insurance. Each insurer would establish
25 its own rates and price-fixing agreements and other
26 anticompetitive behavior among insurers would be pro-
27 hibited. The current rating organization would be re-
28 placed by a data gathering organization. The insur-
29 ance superintendent would retain authority to disap-
30 prove rates that were unfairly discriminatory or
31 which threatened the solvency of a carrier. If, af-
32 ter a hearing, the superintendent finds that the mar-
33 ket is noncompetitive, he has the authority to disap-
34 prove excessive rates and revert to the data report-
35 ing, rating standards and prior approval authority in
36 the current law.

37 The Workers' Compensation Competitive Rating Act
38 also makes statutory an assigned risk plan for em-
39 ployers otherwise unable to purchase coverage, re-
40 quires a uniform experience rating procedure to en-
41 courage loss control and safety, provides for licens-
42 ing standards for the statistical gathering organiza-
43 tion and requires that the Superintendent of Insur-
44 ance mandate a merit rating plan for employers too
45 small to be experience rated. To provide a reasonable

1 period for transition to competitive rating and for
2 assessment of the cost impact of the other reforms in
3 this bill, maximum rates are fixed at the current
4 level for one year after the effective date of this
5 Act and rates may not increase by more than 10% in
6 each of the following 2 years.

7 There are at least 9 other states that have
8 adopted competitive rating in recent years.

9 This bill modifies the computation of the auto-
10 matic annual increase in weekly benefits by capping
11 it at 5%. This conforms to recent congressional ac-
12 tion regarding federal workers' compensation pro-
13 grams. These sections also reduce the maximum weekly
14 benefit from 166 2/3% to 110% of the state average
15 weekly wage.

16 This bill also restores a previously effective
17 provision of Maine law regarding payment of benefits
18 to widows and widowers who remarry, so that benefits
19 will terminate upon remarriage, as well as upon a
20 change in dependency status. Any benefits would then
21 be payable to the children, if any.

22 The bill revises the formula for calculation of
23 schedule benefits, for loss of, or loss of use of,
24 certain specified body parts, so that all eligible
25 claimants would receive a lump-sum payment determined
26 by multiplying the statutorily prescribed periods of
27 presumed incapacity by 2/3 of the state average week-
28 ly wage. Under the current law, the amount of sched-
29 uled benefits to which a claimant is entitled depends
30 upon his earnings at the time of the injury. This is
31 inequitable, since employees at lower wage levels and
32 part-time employees receive less compensation for
33 loss of bodily function than those earning more. This
34 change requires that loss of a body part be compen-
35 sated equally for all claimants, regardless of their
36 preinjury earnings.

37 The bill provides for the coordination of work-
38 ers' compensation benefits with federal social secu-
39 rity old age benefits and with other employee benefit
40 plans to the extent that they were funded by the em-
41 ployer. This reduces the chance of some workers re-
42 ceiving combined retirement and workers' compensation

1 benefits in excess of their working income. Benefit
2 coordination is now being addressed in many states.

3 The bill provides a procedure for mandatory re-
4 view of benefit payments for incapacity, when these
5 benefits have been paid for 12 months and again when
6 they have been paid for a total of 36 months.

7 The bill provides that attorneys' fees be awarded
8 only in cases where the employee prevails.

9 The bill repeals the existing provision for ap-
10 portionment of liability in cases where an employee
11 has sustained more than one injury while working for
12 different employers, or while working for the same
13 employer insured by a different insurer at the time
14 of the subsequent injury, and replaces it with a re-
15 quirement that the insurer providing coverage at the
16 time of the last injury is responsible for all bene-
17 fits payable.

18 The bill repeals the Maine Revised Statutes, Ti-
19 tle 39, section 112 which prohibits the use of an
20 employee's statements in all proceedings under the
21 Act, unless those statements are made under strict
22 conditions. This limitation, comparable to the "Mir-
23 anda" warning requirement applicable in criminal
24 cases, has no counterpart in civil procedures gener-
25 ally. Repeal of this provision contributes to commis-
26 sion decisions being made on their merits, based on
27 all reliable information, including the employee's
28 own statements.

29 The bill provides that the Act will become effec-
30 tive on January 1, 1986, and that it will apply only
31 to injuries occurring on or after its effective date.

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