

# MAINE STATE LEGISLATURE

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L.D. 1343

(Filing No. H- 373)

STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
112TH LEGISLATURE  
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 937, L.D. 1343, Bill, "AN ACT to Establish Competitive Insurance Rating under the Maine Workers' Compensation System."

Amend the bill by inserting after the title and before the enacting clause the following:

'Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, workers' compensation insurance is a matter of vital importance to Maine's economy; and

Whereas, the method used to determine workers' compensation insurance rates affects all participants in the system, including employers who purchase insurance, insurers who provide that insurance and employees who receive benefits; and

Whereas, reform of the current ratemaking process is immediately necessary to protect the integrity of the workers' compensation system and the interests of all concerned parties; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Further amend the bill by striking out everything after the enacting clause and inserting in its place the following:



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1 (6) To all other relevant factors within  
2 and outside this State;

3 (6-A) In the case of workers' compensation  
4 rates, consideration shall be given to the  
5 information required to be filed under Title  
6 39, section ~~22~~ 22-D, subsections ~~2 and 3~~ 4  
7 and 5; and

8 (7) In the case of fire insurance rates,  
9 consideration shall be given to the experi-  
10 ence of the fire insurance business during a  
11 period of not less than the most recent  
12 5-year period for which such experience is  
13 available.

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15 by PL 1983, c. 551, §1, is repealed.

16 Sec. 5. 24-A c. 25, sub-c. II is enacted to  
17 read:

18 SUBCHAPTER II

19 WORKERS' COMPENSATION COMPETITIVE RATING ACT

20 §2331. Title

21 This subchapter shall be known and may be cited  
22 as the "Workers' Compensation Competitive Rating  
23 Act."

24 §2332. Purposes

25 The purposes of this Act are:

26 1. Prohibit price fixing. To prohibit price fix-  
27 ing agreements and other anticompetitive behavior by  
28 insurers;

29 2. Protect policyholders and the public. To pro-

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1 tect policyholders and the public against the adverse  
2 effects of excessive, inadequate or unfairly discrim-  
3 inatory rates.

4 3. Promote price competition. To promote price  
5 competition among insurers so as to provide rates  
6 that are responsive to competitive market conditions;

7 4. Provide regulatory procedures. To provide  
8 regulatory procedures for the maintenance of appro-  
9 prate data reporting systems;

10 5. Create improvements. To improve availability,  
11 fairness and reliability of insurance; and

12 6. Authorize cooperative action. To authorize  
13 essential cooperative action among insurers in the  
14 process of gathering and sharing data and to regulate  
15 that activity to prevent practices that tend to sub-  
16 stantially lessen competition or create a monopoly.

17 §2333. Definitions

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

21 1. Advisory organization. "Advisory organiza-  
22 tion" means an entity which has 2 or more member in-  
23 surers or is controlled either directly or indirectly  
24 by 2 or more insurers and which assists insurers in  
25 rate-making related activities.

26 A. Two or more insurers having a common owner-  
27 ship or operating in this State under common man-  
28 agement or control, constitute a single insurer  
29 for the purpose of this definition.

30 B. Advisory organization does not include a  
31 joint underwriting association, an actuarial or  
32 legal consultant or an employee of an insurer or  
33 insurers under common control or management or

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- 1           their employees or manager.
- 2           2. Classification system or classification.  
3           "Classification system" or "classification" means the  
4           insurance plan, system or arrangement for recognizing  
5           differences in exposure to hazards among industries,  
6           occupations or operations of insurance policyholders.
- 7           3. Competitive market. "Competitive market"  
8           means a market which has not been found to be noncom-  
9           petitive pursuant to section 2335.
- 10          4. Expenses. "Expenses" means that portion of a  
11          rate attributable to acquisition, field supervision  
12          and collection expenses, general expenses, taxes, li-  
13          enses and fees.
- 14          5. Experience rating. "Experience rating" means  
15          a rating procedure utilizing past insurance experi-  
16          ence of the individual policyholder to forecast fu-  
17          ture losses by measuring the policyholder's loss ex-  
18          perience against the loss experience of policyholders  
19          in the same classification to produce a prospective  
20          premium credit, debit or unity modification.
- 21          6. Loss ratio. "Loss ratio" means the ratio of  
22          actual incurred losses during the previous 3-year pe-  
23          riod to the actual earned premiums during that peri-  
24          od.
- 25          7. Loss trending. "Loss trending" means a proce-  
26          ure for projecting developed losses to the average  
27          date of loss for the period during which the policies  
28          are to be effective.
- 29          8. Lost-time claim. "Lost-time claim" means a  
30          claim for which compensation is paid under Title 39,  
31          section 54-A, 55-A, 56, 56-A or 58-A.
- 32          9. Market. "Market" means the interaction be-  
33          tween buyers and sellers of workers' compensation in-  
34          surance within this State pursuant to this subchap-

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1 ter. A specific market may be identified by geograph-  
2 ic area or schedule or classification system catego-  
3 ry.

4 10. Merit rating. "Merit rating" means a rating  
5 procedure utilizing the past insurance experience of  
6 an individual policyholder with a premium too small  
7 to be eligible for experience rating to adjust the  
8 policyholder's future premiums to reflect anticipated  
9 experience that is better or worse than average.

10 11. Noncompetitive market. "Noncompetitive mar-  
11 ket" means a market for which there is a ruling in  
12 effect pursuant to section 2335 that a reasonable de-  
13 gree of competition does not exist.

14 12. Pure premium rate. "Pure premium rate" means  
15 that portion of the rate which represents the loss  
16 cost per unit of exposure, including lost adjustment  
17 expense.

18 13. Rate. "Rate" means the cost of insurance per  
19 exposure base unit, prior to any application of indi-  
20 vidual risk variations based on loss or expense con-  
21 siderations. Rate does not include minimum premiums.

22 14. Residual market mechanism. "Residual market  
23 mechanism" means an arrangement involving participa-  
24 tion by insurers in the equitable apportionment among  
25 them of insurance which may be afforded applicants  
26 who are unable to obtain insurance through ordinary  
27 methods. It includes the Accident Prevention Account  
28 and the Safety Pool.

29 15. Schedule rating. "Schedule rating" means an  
30 insurance rating procedure where the premium for an  
31 insured may be modified in accordance with rating  
32 rules to reflect characteristics of the risk not re-  
33 flected in its experience.

34 16. Statistical plan. "Statistical plan" means  
35 the plan, system or arrangement used to collect data.



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1 degree of competition exists, the superintendent  
2 shall consider relevant tests of workable competition  
3 pertaining to market structure, market performance  
4 and market conduct, including:

5 A. The extent to which any insurer controls a  
6 market;

7 B. Whether the total number of companies writing  
8 insurance is sufficient to provide multiple op-  
9 tions to an employer;

10 C. The disparity among rates and among classifi-  
11 cations and subclassifications to the extent that  
12 they result in rate differentials;

13 D. The availability of insurance and the number  
14 of insurers and self-insurers actively providing  
15 workers' compensation coverage and the level of  
16 and changes in market share of insurers and  
17 self-insurers;

18 E. The degree of participation of employers in  
19 the residual market mechanism;

20 F. Whether rate levels in the market are exces-  
21 sive, inadequate or unfairly discriminatory; or

22 G. The relationship between the premiums charged  
23 and the cost of providing coverage, with due con-  
24 sideration of investment income.

25 4. Basis of order. Any single factor under sub-  
26 section 3 may be a sufficient basis for determining  
27 that a reasonable degree of competition does not ex-  
28 ist in a market.

29 5. Report. The superintendent shall issue a re-  
30 port annually, beginning in 1987, on or before Sep-  
31 tember 1, detailing the state of competition in the  
32 market on a statewide basis and identifying specific  
33 markets in which competition may not exist or may be

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1 threatened. The report shall be based on the criteria  
2 of subsection 3, with appropriate weight given to all  
3 factors and shall be supported with specific evi-  
4 dence. The report shall be sent to the Governor, the  
5 President of the Senate and the Speaker of the House  
6 of Representatives.

7 §2336. Rate standards

8 The following standards shall be used in deter-  
9 mining the reasonableness of rates for insurance un-  
10 der this chapter.

11 1. General. Rates shall not be excessive, inade-  
12 quate or unfairly discriminatory.

13 2. Excessiveness. Standards of excessiveness  
14 shall be as follows:

15 A. Rates in a competitive market are presumed  
16 not to be excessive;

17 B. Rates are excessive if:

18 (1) The rate is likely to produce a profit  
19 or a return on capital and surplus allocable  
20 to risks in this State that is unreasonably  
21 high for the insurance provided;

22 (2) Expenses included in the rate are un-  
23 reasonably high in relation to services ren-  
24 dered; or

25 (3) The rate includes excessive  
26 subsidization of Safety Pool loss experi-  
27 ence.

28 3. Inadequacy. Rates are inadequate if:

29 A. They are clearly insufficient to sustain pro-  
30 jected losses and expenses; and

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1           B. The use of these rates, if continued, would:

2                   (1) Endanger the solvency of the insurer;

3                   (2) Tend to unreasonably limit competition;  
4                   or

5                   (3) Tend to create a monopoly in the mar-  
6                   ket.

7           4. Unfair discrimination. Unfair discrimination  
8 exists if, after allowing for practical limitations,  
9 rate price differentials fail to reflect equitably  
10 the differences in expected losses and expenses. A  
11 rate is not unfairly discriminatory because different  
12 premiums result for policyholders with like loss ex-  
13 posures but different expenses, or like expenses but  
14 different loss exposures, so long as the rate re-  
15 fects those differences with reasonable accuracy.

16           §2337. Rating criteria

17                   In determining whether rates comply with the  
18 standards of section 2336, the following criteria  
19 shall apply.

20                   1. Basic factors in rates. Due consideration may  
21 be given to past and prospective loss and expense ex-  
22 perience within and outside of this State, to catas-  
23 trophe hazards and contingencies, to events or trends  
24 within and outside of this State, to loadings for  
25 leveling premium rates over time for dividends or  
26 savings to be allowed or returned by insurers to  
27 their policyholders, members or subscribers and to  
28 all other relevant factors, including judgment.

29                   2. Expenses. The expense provisions included in  
30 the rates to be used by an insurer shall reflect the  
31 operating methods of the insurer and, so far as it is  
32 credible, its own actual and anticipated expense ex-  
33 perience.

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1           3. Profit. 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 and to a reasonable  
7 return on capital and surplus allocable to the cover-  
8 age of risks in this State.

9           §2338. Filing of rates and other rating information

10           Every insurer shall file with the superintendent  
11 all rates and supplementary rate information which  
12 are to be used in this State, except that information  
13 contained in the uniform plans to which each insurer  
14 must adhere under section 2341.

15           1. Competitive markets. In a competitive market,  
16 rates and supplementary rate information shall be  
17 filed not later than 5 days after their effective  
18 date.

19           A. If the superintendent finds, after notice and  
20 hearing, that an insurer's rates require closer  
21 supervision because of the insurer's financial  
22 condition or unfairly discriminatory or excessive  
23 rating practices, he may require prefiling of  
24 rates.

25           B. If prefiling is required, the insurer shall  
26 file with the superintendent at least 30 days be-  
27 fore the effective date all such rates and such  
28 supplementary rate information and supporting in-  
29 formation as prescribed by the superintendent.  
30 Upon application by the filer, the superintendent  
31 may authorize an earlier effective date.

32           2. Noncompetitive market. In a noncompetitive  
33 market, rates and supplementary rate information  
34 shall be filed and shall not take effect until a de-  
35 termination is made by the superintendent. For state-  
36 wide rates in a noncompetitive market:

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1        A. The filing shall include the information re-  
2        quired in a filing under Title 39, section 22-D,  
3        subsections 4 and 6, and, to the extent ordered  
4        by the superintendent, the information required  
5        in a filing under subsection 5;

6        B. This Title and Title 39, section 22-D shall  
7        apply; and

8        C. If the State as a market is found to be non-  
9        competitive, the Public Advocate, as appointed  
10       under Title 35, section 1-A, may be a party to  
11       proceedings under Title 39, section 22-D, relat-  
12       ing to rates. A filing requesting that proceed-  
13       ing shall pay a filing fee as provided under sec-  
14       tion 2350, subsection 3, paragraph B.

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

21       §2339. Disapproval of rates

22       1. Timing. A rate may be disapproved within the  
23       following time limits.

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

26       B. A rate subject to prefiling under section  
27       2338 may also be disapproved before the effective  
28       date.

29       C. A rate for a noncompetitive or a residual  
30       market shall not become effective until estab-  
31       lished by the superintendent pursuant to Title  
32       39, section 22-D.

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1           2. Bases of disapproval. The bases for disap-  
2           proval are as follows.

3           A. The superintendent shall disapprove a rate if  
4           the insurer fails to comply with the filing re-  
5           quirements under section 2338.

6           B. The superintendent shall disapprove a rate  
7           for use in a competitive market if he finds that  
8           the rate violates the standards of section 2336  
9           or any other applicable requirement of this Act.

10          3. Disapproval procedure; order; interim  
11          rates. The superintendent may disapprove rates in  
12          accordance with the following procedures.

13          A. The procedure for disapproval shall be as  
14          follows.

15                 (1) If the superintendent finds under sec-  
16                 tion 2335 that a reasonable degree of compe-  
17                 tition does not exist or believes that rates  
18                 violate the standards of section 2336 or any  
19                 other applicable requirement of this Act, he  
20                 may require the insurers to file supporting  
21                 information in support of existing rates  
22                 within 30 days or within a reasonable time  
23                 extension for good cause shown as the super-  
24                 intendent may fix. If, after reviewing the  
25                 supporting rate information, the superin-  
26                 tendent believes that such rates may violate  
27                 any of the requirements of this Act, he  
28                 shall call a hearing prior to any disapproval.  
29                 al.

30                 (2) The superintendent may disapprove,  
31                 without hearing, rates prefiled pursuant to  
32                 section 2338, subsection 1, that have not  
33                 become effective. The insurer whose rates  
34                 have been disapproved shall be given a hear-  
35                 ing upon a written request made within 30  
36                 days after the disapproval order.

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1           B. If the superintendent disapproves a rate, he  
2           shall issue an order specifying in what respects  
3           it fails to meet the requirements of this sub-  
4           chapter and stating when that rate shall be dis-  
5           continued for any policy issued or renewed after  
6           a date specified in the order. The order shall  
7           be issued within 30 days after the close of the  
8           hearing or within a reasonable time extension for  
9           good cause shown as the superintendent may fix.  
10          The order may include a provision for premium ad-  
11          justment for the period after the effective date  
12          of the order for policies in effect on that date.

13          C. Whenever an insurer has no legally effective  
14          rates, the superintendent shall specify interim  
15          rates for the insurer that correspond to the  
16          rates in effect at that time for the Safety Pool.  
17          He may order that a specified portion of the pre-  
18          miums be placed in an escrow account approved by  
19          him. When new rates become legally effective,  
20          the superintendent shall order the escrowed funds  
21          or any overcharge in the interim rates to be dis-  
22          tributed appropriately, except that refunds of  
23          less than \$10 per policyholder shall not be re-  
24          quired.

25          §2340. Monitoring competition and compliance

26           1. Monitoring competition. The superintendent  
27           shall monitor the degree of competition in this  
28           State. In doing so, he shall utilize existing  
29           relevant information, analytical systems and other  
30           sources, cause or participate in the development of  
31           new relevant information, analytical systems and other  
32           sources or rely on some combination thereof.  
33           These activities may be conducted internally within  
34           the insurance bureau, in cooperation with other state  
35           insurance departments, through outside contractors  
36           and in any other appropriate manner.

37           2. Monitoring rate compliance. The superintend-

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1 ent shall make or cause to be made investigations as  
2 he may deem necessary to satisfy himself that rates  
3 comply with the requirements of this Act.

4 §2341. Uniform administration of classifications;  
5 reporting of rates and other information

6 1. Uniform classification system. Every work-  
7 ers' compensation insurer, including self-insurers,  
8 shall adhere to a uniform classification system and  
9 uniform experience rating plan filed with the super-  
10 intendent by an advisory organization designated by  
11 the superintendent and subject to his disapproval.  
12 An insurer may develop subclassifications of the uni-  
13 form classification system on which a rate may be  
14 made, provided that:

15 A. A subclassification must be filed with the  
16 superintendent 30 days prior to its use.

17 B. The superintendent may disapprove a  
18 subclassification if:

19 (1) The insurer fails to demonstrate that  
20 the data produced may be reported consistent  
21 with the uniform statistical plan and clas-  
22 sification system; or

23 (2) The proposed subclassification:

24 (a) Is not reasonably related to the  
25 exposure;

26 (b) Is not adequately defined;

27 (c) Has not been shown to distinguish  
28 among insured based on the potential  
29 for or hazard of loss; or

30 (d) Is likely to be unfairly discrimi-  
31 natory.

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1           2. Statistical advisory organization. The super-  
2 intendent shall designate an advisory organization to  
3 assist him in gathering, compiling and reporting rel-  
4 evant statistical information. Every workers' compen-  
5 sation insurer shall record and report its workers'  
6 compensation experience to the designated advisory  
7 organization as set forth in the uniform statistical  
8 plan.

9           3. Manual rules. The designated advisory organi-  
10 zation shall develop and file manual rules, subject  
11 to the approval of the superintendent, reasonably re-  
12 lated to the recording and reporting of data pursuant  
13 to the uniform statistical plan, uniform experience  
14 rating plan and the uniform classification system.

15           A. Every workers' compensation insurer shall ad-  
16 here to the approved manual rules and experience  
17 rating plan in writing and reporting its busi-  
18 ness.

19           B. No insurer may agree with any other insurer  
20 or with an advisory organization to adhere to  
21 manual rules which are not reasonably related to  
22 the recording and reporting of data pursuant to  
23 the uniform classification system or the uniform  
24 statistical plan.

25           §2342. Payment of dividends

26           The following provisions apply to the payment of  
27 dividends, savings or unabsorbed premium deposits al-  
28 lowed or returned by insurers to their policyholders,  
29 members or subscribers.

30           1. Discrimination. The payment shall not unfair-  
31 ly discriminate between policyholders.

32           2. Rating plan. A plan for payment of dividends,  
33 savings or unabsorbed premium deposits is not consid-  
34 ered a rating plan or system.

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1     §2343. Uniform experience and merit rating plans

2             An experience or merit rating plan shall contain  
3     reasonable eligibility standards and provide adequate  
4     incentives for loss prevention and for sufficient  
5     premium differentials to encourage safety.

6             1. Experience rating plan. The uniform experi-  
7     ence rating plan shall be the exclusive means for  
8     providing prospective premium adjustment based upon  
9     the past claim experience of an individual insured.

10            2. Retrospective premium adjustments. Insurers  
11     may file rating plans that provide for retrospective  
12     premium adjustments based on an insured's past experi-  
13     ence.

14            3. Merit rating plan. If an insured is not eli-  
15     gible for an experience rating plan, a merit rating  
16     plan shall be applied.

17            A. A plan shall provide for the following mini-  
18     imum credits or maximum debits to be applied to  
19     the otherwise applicable manual premium, based on  
20     the number of lost-time claims of the insured  
21     during the most recent 3-year period for which  
22     statistics are available:

23                    (1) No claims or a loss ratio of less than  
24                    1.0, an 8% credit;

25                    (2) One claim resulting in a loss ratio  
26                    greater than 1.0, no credit or debit; and

27                    (3) Two or more claims resulting in a loss  
28                    ratio greater than 1.0, an 8% debit.

29            B. The insurer shall notify the insured of the  
30     premium adjustment, credit or debit and the rea-  
31     son for it.

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1       4. Applicability. No insurer may apply a merit  
2       rating plan prior to January 1, 1987.

3       §2344. 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. A  
8       plan shall not apply to the residual market.

9       1. Disapproval. The superintendent may disap-  
10       prove any schedule rating plan, pursuant to section  
11       2339, if the plan is unfairly discriminatory, if the  
12       filer has failed to demonstrate that experience can  
13       be accurately reported, or the plan otherwise fails  
14       to comply with the requirements of this section.

15       2. Standards. The following provisions shall ap-  
16       ply to a plan.

17       A. A modification may not be applied unless sup-  
18       ported by evidence contained in the file of the  
19       insurer at the time the modification is applied.

20       B. The effective date of a modification shall  
21       not precede the receipt by the insurer of the evi-  
22       vidence supporting the modification.

23       C. An explanation of the modification shall be  
24       provided to the insured.

25       D. The insurer shall provide an opportunity for  
26       the insured to correct any information by evi-  
27       dence provided to the insurer.

28       E. The plan may include the following factors:

29               (1) Condition of the premises;

30               (2) Classification peculiarities;

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1                   (3) Availability of medical facilities or  
2                   services;

3                   (4) Presence and use of safety devices;

4                   (5) Methods of employee selection, training  
5                   and supervision;

6                   (6) Cooperation between management and the  
7                   insurer on safety and prevention programs;

8                   (7) Compliance with federal, state and lo-  
9                   cal safety and health regulations;

10                   (8) Participation in an organized safety  
11                   training and education program;

12                   (9) Participation in retraining or rehabil-  
13                   itation programs for injured employees; and

14                   (10) Management organization that encour-  
15                   ages safety.

16                   F. Eligibility may not be based on a minimum  
17                   premium.

18                   3. Applicability; limitations. No insurer may  
19                   file a schedule rating plan prior to January 1, 1987.  
20                   In the time period extending from January 1, 1987, to  
21                   December 31, 1988, no scheduled rating credit may ex-  
22                   ceed 25% and no debits may be applied. On or after  
23                   January 1, 1989, no scheduled rating credit or debit  
24                   may exceed 25%.

25                   §2345. Complaints on rates or filings

26                   Every insurer or advisory organization shall pro-  
27                   vide within this State reasonable means whereby, on  
28                   written request, any person aggrieved by the applica-  
29                   tion of its rates or filings may be heard on the man-  
30                   ner in which the rating system has been applied.

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1           1. Response time. If the insurer or advisory or-  
2           ganization fails to grant or reject the request with-  
3           in 30 days, an applicant may proceed as if the appli-  
4           cation had been rejected.

5           2. Appeal. Any party aggrieved by the action of  
6           the insurer or advisory organization on that request  
7           may, within 30 days after written notice of that ac-  
8           tion, appeal to the superintendent. After a hearing  
9           held on not less than 10 days written notice to the  
10           appellant and to the insurer or advisory organiza-  
11           tion, the superintendent may affirm, modify or re-  
12           verse that action.

13           §2346. Licensing advisory organizations

14           No advisory organization may provide services re-  
15           lating to insurance subject to this subchapter and no  
16           insurer may utilize the services of an organization  
17           for those purposes, unless the organization has ob-  
18           tained a license under this section.

19           1. Availability of services. No licensed advis-  
20           ory organization may refuse to supply services for  
21           which it is licensed in this State to an insurer au-  
22           thorized to do business in this State and offering to  
23           pay the fair and usual compensation for the services.

24           2. Licensing. In addition to the requirements  
25           contained in section 2321, the advisory organization  
26           shall include in its application the following:

27           A. A statement showing its technical qualifica-  
28           tions for acting in the capacity for which it  
29           seeks a license; and

30           B. Other relevant information and documents that  
31           the superintendent may require.

32           3. Change of circumstances. An advisory organi-  
33           zation which has applied for a license shall notify  
34           the superintendent of every material change in the

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1 facts or documents on which its application was  
2 based. An amendment to a document shall be filed at  
3 least 30 days before it becomes effective.

4 4. Granting of license. If the superintendent  
5 finds that the applicant and the natural persons  
6 through whom it acts are competent, trustworthy and  
7 technically qualified to provide the services pro-  
8 posed and that all requirements are met, he shall is-  
9 ssue a license specifying the authorized activity of  
10 the applicant. He shall not issue a license if the  
11 proposed activity tends to create a monopoly or to  
12 substantially lessen competition in the market.

13 5. Duration. Licenses shall remain in effect un-  
14 til the licensee withdraws from the State or until  
15 the license is suspended or revoked.

16 6. Suspension or revocation. The license of an  
17 advisory organization which does not comply with the  
18 requirements and standards of this chapter may be  
19 suspended or revoked by the Administrative Court.

20 §2347. Insurers and advisory organizations; prohib-  
21 ited activity

22 1. Restraint of trade. No insurer or advisory  
23 organization may make any arrangement with any other  
24 insurer, advisory organization or other person which  
25 has the purpose or effect of unreasonably restraining  
26 trade or substantially lessening competition in the  
27 business of insurance.

28 2. Rate agreements. No insurer may agree with  
29 any other insurer or with an advisory organization to  
30 adhere to or use a rate or rating plan, other than a  
31 uniform experience or classification rating plan or  
32 rating rule, except as needed to comply with the re-  
33 quirements of section 2341.

34 3. Proof of agreement. The fact that 2 or more  
35 insurers, whether or not members or subscribers of an

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1 advisory organization, use the same rule, rating  
2 plan, rating schedule, rating rule, policy form, rate  
3 classification, underwriting rule, survey or inspec-  
4 tion or similar material is not sufficient in itself  
5 to support a finding that an agreement exists.

6 4. Common ownership. Two or more insurers having  
7 a common ownership or operating in this State under  
8 common management or control may act as if they con-  
9 stituted a single insurer.

10 5. Advisory organizations. Except as specificall-  
11 ly permitted under section 2348, no advisory organi-  
12 zation may:

13 A. Compile or distribute recommendations relat-  
14 ing to rates that include:

15 (1) Expenses, other than loss adjustment  
16 expenses;

17 (2) Profit; or

18 (3) Actuarial projections or trending fac-  
19 tors;

20 B. File rates, supplementary rate information or  
21 supporting information on behalf of an insurer;  
22 or

23 C. Engage in any activity which is prohibited by  
24 chapter 23.

25 §2348. Advisory organizations; permitted activity

26 Any advisory organization, in addition to other  
27 activities not prohibited, may:

28 1. Develop statistical plans. Develop statisti-  
29 cal plans, including class definitions;

30 2. Collect data. Collect statistical data from

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1 members, subscribers or any other source;

2 3. Prepare pure premiums. Prepare and distribute  
3 pure premium rate data in accordance with its statis-  
4 tical plans. The data shall be in sufficient detail  
5 to permit insurers to modify the pure premiums based  
6 on their own rating methods or interpretations of un-  
7 derlying data. Appropriate actuarial projection and  
8 trending factor data may be prepared and submitted to  
9 the superintendent to the extent necessary to estab-  
10 lish proper residual market rates;

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

16 5. Distribute information. Distribute informa-  
17 tion that is filed with the superintendent and open  
18 to public inspection;

19 6. Conduct research. Conduct research and col-  
20 lect statistics in order to discover, identify and  
21 classify information relating to causes or  
22 preventions of losses;

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

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

31 9. Evaluate benefit changes. Conduct research  
32 and collect information to determine the impact of  
33 benefit level changes on pure premium rates; and

34 10. Calculate experience rating modifications.

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1 Prepare and distribute rules and rating values for  
2 the uniform experience rating plan; calculate and  
3 disseminate individual values for the uniform experi-  
4 ence rating plan; and calculate and disseminate indi-  
5 vidual risk premium modifications.

6 §2349. Advisory organizations; filing requirements

7 An advisory organization shall file with the su-  
8 perintendent every pure premium rate, manual of rat-  
9 ing rules, rating schedule and change, amendment or  
10 modification of them, proposed for use in this State,  
11 not more than 5 days after it is distributed to mem-  
12 bers, subscribers or others.

13 §2350. Residual market mechanism

14 The residual market mechanism shall be composed  
15 of an Accident Prevention Account and a Safety Pool.

16 1. Accident Prevention Account. The Accident  
17 Prevention Account shall be an insurance plan that  
18 provides for the equitable apportionment among insur-  
19 ers of insurance which may be afforded applicants who  
20 are in good faith entitled to but unable to procure  
21 that insurance through ordinary methods because of  
22 their demonstrated accident frequency problem,  
23 measurably adverse loss ratio over a period of years,  
24 or demonstrated attitude of noncompliance with safety  
25 requirements.

26 A. All insurers authorized to write workers'  
27 compensation and employers' liability insurance  
28 in this State shall participate in the plan.

29 B. The plan shall include an experience rating  
30 system and merit rating plan whereby the premium  
31 of each employer in the account is modified ei-  
32 ther prospectively or retrospectively. An experi-  
33 ence modification shall only be applied to the  
34 manual rate of the plan. The plan shall also pro-  
35 vide for premium surcharges for employers based

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1           on their specific loss experience within a speci-  
2           fied period or other factors which are reasonably  
3           related to their risk of loss. The sensitivity of  
4           a rating system may vary by size of the risk in-  
5           volved.

6           C. The plan shall produce the least possible  
7           subsidization of the account's loss experience  
8           consistent with this chapter and sound actuarial  
9           principles. Subsidization shall be borne equally  
10           by the voluntary market and the Safety Pool based  
11           on premium amounts.

12           D. Commissions under a plan shall be established  
13           at a level that is neither an incentive nor a  
14           disincentive to place an employer in the account.

15           E. An employer is eligible for insurance from  
16           the Safety Pool if:

17                   (1) He has a loss ratio greater than 1.00  
18                   over the last 3 years for which data is  
19                   available; and

20                   (2) He has attempted to obtain insurance in  
21                   the voluntary market and has been refused by  
22                   at least 2 insurers which write that insur-  
23                   ance in this State.

24           F. A designated advisory organization shall sub-  
25           mit a plan for the superintendent's approval  
26           within 30 days of the effective date of this sec-  
27           tion. A plan or amendment shall not take effect  
28           until approved by the superintendent.

29                   (1) The following applies to premium  
30                   surcharges.

31                           (a) No premium surcharges may be ap-  
32                           plied until on or after January 1,  
33                           1987.

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1                    (b) Premium surcharges apply to a pre-  
2                    mium that is experience or merit rating  
3                    modified.

4                    (c) Premium surcharges may not exceed  
5                    10% prior to January 1, 1989.

6                    (d) Premium surcharges shall be based  
7                    on an insured's adverse deviation from  
8                    expected incurred losses in this State.  
9                    The surcharge shall be based on the ra-  
10                   tio of "A" to "B" where:

11                   (i) "A" is the actual incurred  
12                   losses of a risk during the previ-  
13                   ous 3-year experience period as  
14                   reported; and

15                   (ii) "B" is the expected incurred  
16                   losses of a risk during that peri-  
17                   od as calculated under the uniform  
18                   experience or merit rating of a  
19                   plan times the risk's current ex-  
20                   perience or merit rating modifica-  
21                   tion factor.

22                   (e) The premium surcharge shall be as  
23                   follows:

24	<u>Ratio of "A" to "B"</u>	<u>Surcharge</u>
25	<u>Less than 1.20</u>	<u>None</u>
26	<u>1.20 or greater, but</u>	
27	<u>less than 1.30</u>	<u>5%</u>
28	<u>1.30 or greater, but</u>	
29	<u>less than 1.40</u>	<u>10%</u>
30	<u>1.40 or greater, but</u>	
31	<u>less than 1.50</u>	<u>15%</u>



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1           C. A member of the Safety Pool who becomes inel-  
2           igible under paragraph B shall be ordered to  
3           leave the Safety Pool after notice under Title  
4           39, section 23, subsection 1.

5           D. The Safety Pool shall be subject to Title 39,  
6           section 22-D, and shall be considered to be an  
7           insurer under this chapter.

8                   (1) There shall be no subsidization of the  
9                   Safety Pool's loss experience by employers  
10                   not in the Safety Pool.

11                   (2) The superintendent shall annually re-  
12                   view the rates in the Safety Pool to deter-  
13                   mine if subsidization exists.

14           E. Every insurance company which is a partici-  
15           pant in the Accident Prevention Account shall al-  
16           so be a participant in the Safety Pool.

17           F. The superintendent, after notice and hearing,  
18           shall adopt and may amend a plan for the opera-  
19           tion of the Safety Pool.

20                   (1) An advisory organization designated by  
21                   the superintendent shall submit a plan, in-  
22                   cluding rates, supplementary rate informa-  
23                   tion and policy forms, for the  
24                   superintendent's approval within 30 days of  
25                   the effective date of this section.

26                   (2) The superintendent may require addi-  
27                   tional information he deems necessary to  
28                   properly evaluate the plan.

29                   (3) Commissions under a plan shall be es-  
30                   tablished at a level that is neither an in-  
31                   centive nor a disincentive to place an em-  
32                   ployer in the Safety Pool.

33                   (4) A plan, or any amendment to it, shall

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1                   not take effect until approved by the super-  
2                   intendent.

3                   G. The superintendent shall annually issue a re-  
4                   port, beginning in 1987, on or before September  
5                   1st, to the Governor, the President of the Senate  
6                   and the Speaker of the House of Representatives.  
7                   The report shall include at least the following  
8                   information relating to the Safety Pool:

9                   (1) The percentage of total insured premium  
10                  in this State written in the Safety Pool;

11                  (2) The percentage of all insured employers  
12                  in this State written in the Safety Pool;

13                  (3) The number of employers in the Safety  
14                  Pool and the number who have entered or  
15                  left;

16                  (4) The total earned premium, paid losses,  
17                  reserves and incurred losses; and

18                  (5) The investment income of the Safety  
19                  Pool and its method of allocation or deter-  
20                  mination.

21                  3. Rate filings. Rate filings for rates in the  
22                  Accident Prevention Account and the Safety Pool shall  
23                  be made at the same time or not sooner than 180 days  
24                  apart. If filed together, they shall be considered  
25                  together.

26                  A. A rate filing for the Safety Pool shall in-  
27                  clude experience and merit rating plans. The ex-  
28                  perience rating plan shall be the uniform experi-  
29                  ence rating plan. The merit plan shall provide  
30                  the maximum credits possible to Safety Pool mem-  
31                  bers on the basis of individual loss experience,  
32                  including frequency and severity, consistent with  
33                  this chapter and sound actuarial principles.

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1           B. The Public Advocate, as appointed under Title  
2           35, section 1-A, shall be a party to proceedings  
3           under Title 39, section 22-D, relating to rates  
4           for the Accident Prevention Account or Safety  
5           Pool.

6           C. A filer requesting a proceeding under Title  
7           39, section 22-D, relating to rates for the Acci-  
8           dent Prevention Account or Safety Pool, shall pay  
9           to the superintendent at the time of the filing a  
10           filing fee, which shall be immediately credited  
11           to the Public Advocate. The fee shall be segre-  
12           gated and expended for the purpose of employing  
13           outside consultants to fulfill the requirements  
14           of paragraph B and any portion not so expended  
15           shall be returned to the filer. For a filing  
16           filed in 1985, 1986 or 1987, the fee shall be  
17           \$75,000; in 1988, \$65,000; and in 1989 or there-  
18           after, \$50,000. If filings in the Accident Pre-  
19           vention Account and the Safety Pool are made to-  
20           gether, only one fee shall be paid, which shall  
21           be evenly divided between the 2 filers.

22           D. The designated advisory organization may make  
23           and file the plan of operation, rates, rating  
24           plans, rules and policy forms for the Accident  
25           Prevention Account or Safety Pool, or both.

26           4. Review. The superintendent shall review the  
27           rates, including rates for individual classifications  
28           and subclassifications, in the Accident Prevention  
29           Account and the Safety Pool at least once every 2  
30           years and may review rates more frequently if he be-  
31           lieves it necessary.

32           5. Rates. The insurance rates for the Accident  
33           Prevention Account and the Safety Pool shall be gov-  
34           erned by section 2355.

35           §2351. Safety groups

36           A safety group shall be an insured plan that pro-

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1 vides for an alternative source of insurance for mem-  
2 bers of an organization or association. An insurer  
3 may issue a workers' compensation and employers' lia-  
4 bility policy or policies insuring a safety group if  
5 the requirements of this section are met.

6 1. Filings. The organization or association  
7 shall file with the superintendent:

8 A. A copy of its articles of incorporation and  
9 bylaws or its agreement of association and rules  
10 governing the conduct of its business, all certi-  
11 fied by the custodian of the originals;

12 B. An agreement that only members of the organi-  
13 zation or association shall be eligible for in-  
14 surance as a member of the group and that it will  
15 notify its insurer within 10 days if any member  
16 fails to remain a member in good standing in ac-  
17 cordance with the standards and rules of the or-  
18 ganization or association;

19 C. A description of the operation and makeup of  
20 a safety committee which, by means of education  
21 and otherwise, will seek to reduce the incidence  
22 and severity of accidents or claims; and

23 D. If a group policy, an agreement in writing  
24 duly executed guaranteeing that, if the insurer  
25 notifies the safety group of the nonpayment of a  
26 premium by an insured member within 60 days after  
27 the premium was due, the safety group will pay to  
28 the insurer the amount of any past due premium  
29 which does not exceed the amount of the dividends  
30 that are due the safety group or its members from  
31 the insurer. The safety group shall promptly no-  
32 tify the insurer of the known insolvency of any  
33 member of the group and shall request, upon  
34 learning of the insolvency, the removal of the  
35 member from the group. A copy of the resolution  
36 of the governing board of the group authorizing  
37 the execution of the guarantee agreement shall be

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1           filed with the superintendent and with the insurer  
2           issuing the group policy.

3           2. Advance premium discounts. Any advance premi-  
4           um discount for any new or existing safety group  
5           shall be filed with the superintendent not later than  
6           5 days after the effective date.

7           3. Management. The safety group shall designate  
8           a person to act as the manager or authorized repre-  
9           sentative of the group. The manager or the group may  
10           be remunerated by the members for expenses, including  
11           all ordinary operating expenses of the group, but in  
12           no instance shall the amount charged to members ex-  
13           ceed 10% of earned premiums.

14           4. Dividends. Dividends or returned premiums  
15           paid or credited to a safety group shall be paid or  
16           credited to the individual members of the group, ex-  
17           cept that the indebtedness for any unpaid premium  
18           shall be first deducted from any dividend or premium  
19           returned.

20           5. Other requirements. Any safety group formed  
21           or operating under this section shall be subject to  
22           the requirements of sections 2931 to 2940, except  
23           that the safety group or the insurer may establish  
24           reasonable underwriting standards regarding eligibil-  
25           ity for acceptance and continued membership of the  
26           safety group. These underwriting standards shall be  
27           filed with the superintendent and may be disapproved  
28           by the superintendent if they unreasonably limit mem-  
29           bership in the safety group.

30           §2352. Examinations

31           1. Examination. The superintendent may examine  
32           an insurer or advisory organization as he deems nec-  
33           essary to ascertain compliance with this subchapter.

34           2. Records. Every insurer and advisory organi-  
35           zation shall maintain reasonable records of the type

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1 and kind reasonably adapted to its method of opera-  
2 tion, containing its experience or the experiences of  
3 its members, including the data, statistics or infor-  
4 mation collected or used by it in its activities.

5 A. These records shall be available at all rea-  
6 sonable times.

7 B. These records shall be maintained in an of-  
8 fice within this State or shall be made available  
9 to the superintendent at his office on reasonable  
10 notice.

11 3. Cost. The reasonable costs of an examination  
12 shall be paid by the examined party on presentation  
13 of a detailed account of these costs.

14 4. Report. In lieu of an examination, the su-  
15 perintendent may accept the report of an examination  
16 by the insurance supervisory official of another  
17 state, made pursuant to the laws of that state.

18 §2353. Penalties

19 1. Civil penalties. A person or organization in  
20 violation of a provision of this chapter shall be as-  
21 essed a civil penalty of not more than \$1,000 for  
22 each violation, except that where a violation is  
23 willful, a civil penalty of not more than \$10,000  
24 shall be assessed for each violation. These penal-  
25 ties may be in addition to any other penalty provided  
26 by law.

27 2. Separate violation. For purposes of this  
28 section, an insurer using a rate for which that in-  
29 surer has failed to file the rate, supplementary rate  
30 information or supporting information as required by  
31 this subchapter, shall have committed a separate vi-  
32 olation for each day that failure continues.

33 3. License. The license of an advisory organi-  
34 zation or insurer which fails to comply with an order

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1 of the superintendent may be suspended or revoked by  
2 the Administrative Court.

3 §2354. Judicial review

4 An order, rule or decision of the superintendent  
5 made after a hearing is subject to judicial review in  
6 accordance with section 236.

7 §2355. Rate change limitations

8 The following provisions apply to all workers'  
9 compensation insurance rates under this subchapter  
10 and Title 39, section 22-D.

11 1. Rate reduction. A rate filing shall not be  
12 effective after the effective date of this section  
13 unless the overall manual rate level is reduced by an  
14 amount that is equal to 60% of the actuarially esti-  
15 mated savings in workers' compensation benefits which  
16 result from the passage of this subchapter. If no  
17 rate filing is effective after the effective date of  
18 this section, the superintendent shall immediately  
19 promulgate rates, to be effective on August 1, 1985,  
20 whose overall manual rate level is reduced by an  
21 amount that is equal to 60% of the actuarially esti-  
22 mated savings in workers' compensation benefits which  
23 result from the passage of this subchapter. The  
24 superintendent's determination of actuarially esti-  
25 mated savings shall require notice and hearing under  
26 Title 5, chapter 375, subchapter IV; and this Title  
27 and Title 39, sections 22-C and 22-D, shall not ap-  
28 ply.

29 A. "Overall manual rate level" means the pro-  
30 jected total amount of money to be generated by  
31 the application of manual rates per \$100 of pay-  
32 roll on file with the superintendent, exclusive  
33 of any rating system adjustments, including mini-  
34 imum premiums, loss constants, experience, retro-  
35 spective or merit rating plans or dividend plans.

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1           B. An insurer may not use a rate for workers'  
2           compensation insurance higher than this rate.

3           2. Rates in effect from July 1, 1985, to Decem-  
4           ber 31, 1986. From July 1, 1985, to December 31,  
5           1986, an insurer's rates shall not exceed the work-  
6           ers' compensation rates in place on June 30, 1985, as  
7           adjusted under subsection 1.

8           3. Rates in effect from January 1, 1987, to De-  
9           cember 31, 1987. During 1987, an insurer's rates  
10           shall not exceed the rates in effect on December 31,  
11           1986, increased by no more than 10%.

12           4. Rates in effect from January 1, 1988, to De-  
13           cember 31, 1988. During 1988, an insurer's rates  
14           shall not exceed the amount allowed under subsection  
15           3, increased by no more than 10%.

16           5. Application. The rate limitations in this  
17           section apply to all workers' compensation insurance  
18           written in this State and to rates in the competitive  
19           and residual markets.

20           §2356. Costs

21           In any proceeding under section 2335 or 2336, the  
22           superintendent may employ staff personnel and outside  
23           consultants. The reasonable costs related to the  
24           conduct of the proceeding, including conduct of any  
25           hearings, shall be borne by the insurer involved in  
26           the proceeding.

27           §2357. Nonseverability

28           In the event that any portion of this subchapter  
29           is held invalid, it is the intent of the Legislature  
30           that this entire subchapter is invalidated and the  
31           provisions of Title 39, section 22-C, subsection 13  
32           and section 22-D are also invalidated.

33           Sec. 6. 39 MRSA §22-B, as amended by PL 1983, c.

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1 659, §§1 and 2, is repealed.

2 Sec. 7. 39 MRSA §22-C, sub-§13 is enacted to  
3 read:

4 13. Application. This section does not apply to  
5 rate filings governed by section 22-D and Title 24-A,  
6 chapter 25, subchapter II. This section is repealed  
7 on January 1, 1989.

8 Sec. 8. 39 MRSA §22-D is enacted to read:

9 §22-D. Approval of insurance policies and rates

10 The following provisions apply to determination  
11 of insurance policies and rates by the Superintendent  
12 of Insurance as provided in Title 24-A, chapter 25,  
13 subchapter II.

14 1. Policies. Every insurance company issuing  
15 workers' compensation insurance policies covering the  
16 payment of compensation and benefits provided for in  
17 this Act shall file with the Superintendent of Insur-  
18 ance:

19 A. A copy of the form of the policies. A policy  
20 may not be issued until the superintendent has  
21 approved the form;

22 B. Its classification of risks and their premium  
23 rates and any subsequent proposed classifications  
24 and premium rates; and

25 C. Any premium rates less than those approved  
26 which may be used.

27 Premium rates for insurance issued in the residual  
28 market shall not take effect until established by the  
29 superintendent. All other premium rates shall take  
30 effect as provided in Title 24-A, chapter 25, sub-  
31 chapter II.

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1           2. Determination of rates. The superintendent  
2 shall apply the procedures and standards of this sec-  
3 tion in investigating, reviewing and determining just  
4 and reasonable rates.

5           A. He may require the filing of specific rates  
6 for workers' compensation insurance, including  
7 classifications of risks, experience or any other  
8 rating information from insurance companies au-  
9 thorized to transact insurance in this State.

10           B. He may make or cause to be made investiga-  
11 tions as he deems necessary to satisfy himself  
12 that the rates to be promulgated are just and  
13 reasonable.

14           C. He may at any time, after public hearing,  
15 withdraw his approval of a previously approved  
16 rate filing.

17           3. Notice of filing. At least 45 days prior to  
18 any filing for rates under this section, a filer  
19 shall notify the superintendent in writing of its in-  
20 tention to file and shall disclose the approximate  
21 amount of a requested increase or decrease, a de-  
22 scription of major rating rule changes to be pro-  
23 posed. Within 10 days of receipt, the superintendent  
24 shall notify the public by publication in the state  
25 paper and notify the Public Advocate that a rate fil-  
26 ing is to be made.

27           4. Contents of filing. A rate filing shall in-  
28 clude, for each company included in the filing:

29           A. For each of the 3 calendar years immediately  
30 preceding the date of the filing:

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

33                   (2) For unearned premium, earned premium,  
34 loss and loss expense reserve funds and cap-

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

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- 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, in-  
11                  cluding, 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, an explana-  
22            tion of the basis of the factors used;
- 23            D. Statements or exhibits that reasonably sub-  
24            stantiate assumptions, methodology or calcula-  
25            tions used in support of the proposed rates or to  
26            generate the information or data in the filing  
27            and identification of any of those that are known  
28            or believed to be contrary to established policy  
29            of the superintendent; and
- 30            E. Any other information required to be included  
31            by the superintendent.
- 32            5. Aggregate data. Aggregate expense data, an-  
33            ual losses, loss adjustment expense data and loss

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1 experience data required to be reported under subsec-  
2 tion 4, paragraph A, subparagraphs (5) and (6); and  
3 paragraph B, subparagraph (3), shall be based on ex-  
4 perience and experience data pertaining to this State,  
5 except as otherwise provided in this subsection. The  
6 rate of return on capital and surplus used in estab-  
7 lishing the rates requested, the rate of return on  
8 the investment allocable to the coverage of risks in  
9 this State and the facts, assumptions and calcula-  
10 tions employed to derive each rate of return shall  
11 also be reported in the aggregate.

12 A. To the extent that the Maine expense and ex-  
13 perience data is not fully creditable, the super-  
14 intendent may allow reporting of and consider da-  
15 ta from outside this State.

16 B. Aggregate loss experience data shall:

17 (1) Include and be categorized as required  
18 in subsection 4, paragraph B, subparagraph  
19 (3); and

20 (2) Be presented in tabular form. The ta-  
21 bles shall indicate, with respect to each  
22 classification, the relative weight given to  
23 experience in this State and to national ex-  
24 perience in determining the applicable rate.

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

30 A. Within 30 days of receipt of a filing, the  
31 superintendent shall determine if the filing is  
32 complete.

33 (1) If the filing is incomplete, the super-  
34 intendent shall notify the applicant and all  
35 parties in writing of those deficiencies.

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1                   (2) An applicant shall complete or amend  
2                   the filing within 30 days of that written  
3                   notice.

4                   (3) An action or inaction by the superin-  
5                   tendent under this paragraph does not con-  
6                   stitute a substantive finding that the in-  
7                   formation in the filing is sufficient to es-  
8                   tablish that any action or relief should be  
9                   granted or that any facts have been proven  
10                   or limit the superintendent's authority to  
11                   request further information or data.

12                   B. If the applicant fails to furnish the infor-  
13                   mation within the time prescribed, the superin-  
14                   tendent may issue an order dismissing the filing.

15                   C. For all purposes, the date of completing the  
16                   filing shall be deemed the date on which the last  
17                   document that made the filing complete was re-  
18                   ceived by the superintendent, except that the su-  
19                   perintendent may treat the day that the incom-  
20                   plete filing was filed as the filing date if the  
21                   incompleteness is found to be immaterial or not  
22                   to have delayed, impeded or interfered with the  
23                   ability of the bureau or any party to respond to,  
24                   investigate or process the filing.

25                   7. Standard for approval. This subsection ap-  
26                   plies to determination of just and reasonable rates  
27                   for a filing.

28                   A. The superintendent shall establish rates,  
29                   based on the filing and sworn testimony, which  
30                   are, in addition to any other requirements:

31                   (1) Just and reasonable and not excessive,  
32                   inadequate or unfairly discriminatory;

33                   (2) Based only on a just and reasonable  
34                   profit; and

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1                   (3) Based on reported loss reserves, in-  
2                   cluding the discount rates applied to those  
3                   reserves, that do not result in rates that  
4                   are excessive, inadequate or unfairly dis-  
5                   crimatory.

6                   B. In establishing just and reasonable rates,  
7                   the superintendent shall consider:

8                   (1) The reasonableness of any return on  
9                   capital and surplus allocable to the cover-  
10                   age of risks in this State;

11                   (2) The reasonableness of the amounts of  
12                   capital and surplus allocable to the cover-  
13                   age of risks in this State;

14                   (3) The reported investment income earned  
15                   or realized from funds generated from busi-  
16                   ness in this State;

17                   (4) The reported loss reserves, including  
18                   the methods and the interest rates used in  
19                   determining the present value for reported  
20                   reserves;

21                   (5) The reported annual losses and loss ad-  
22                   justment expenses;

23                   (6) The measures taken to contain costs,  
24                   including loss control, loss adjustment and  
25                   employee safety engineering programs;

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

32                   (8) The operating and management efficiency

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1                   of the companies.

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

5                   D. The filer shall have the burden of proving  
6                   that the rates meet the requirements of this sec-  
7                   tion and Title 24-A, chapters 23 and 25.

8                   E. The superintendent may not approve an in-  
9                   crease or decrease in rates unless he finds that  
10                   the information supplied in the filing and sworn  
11                   testimony is accurate and sufficient to meet the  
12                   requirements of this section.

13                   F. For the introduction of a new rate for a new  
14                   classification or the adjustment of a single rate  
15                   for an existing classification, the requirements  
16                   of paragraph A, subparagraph (1); subsection 2;  
17                   subsection 4, paragraphs B to E; and subsections  
18                   8, 9, 10, 12 and 13 shall apply. The superintend-  
19                   ent shall establish the new rate at a level which  
20                   is not unfairly discriminatory in relation to the  
21                   currently approved rates for other classifica-  
22                   tions.

23                   8. Public record. A rate filing shall be a pub-  
24                   lic record and shall be available for public review  
25                   and inspection.

26                   9. Information for parties and intervenors. A  
27                   party or intervenor may make written application to  
28                   the superintendent for an order that a filer produce  
29                   any information relevant to whether the filing rates  
30                   meet the requirements of this section and Title 24-A,  
31                   except for information relating to a particular  
32                   claim. If the filer fails to furnish the information  
33                   within the time prescribed by the superintendent, the  
34                   party or intervenor making the request may make writ-  
35                   ten application to the superintendent for an order  
36                   dismissing the filing. If, after a hearing, the su-

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1 perintendent determines that the failure to furnish  
2 the information was without good cause, he shall is-  
3 sue an order for dismissal of the filing.

4 10. Public hearing. The superintendent shall  
5 hold a public hearing, as provided in Title 24-A,  
6 sections 229 and 235, on each filing. The public  
7 hearing shall be conducted no sooner than 30 days and  
8 no later than 120 days of the date the rate filing is  
9 deemed complete by the superintendent, unless the su-  
10 perintendent extends these limits under subsection 6.  
11 The superintendent shall establish just and reason-  
12 able rates and state his findings in a written order  
13 issued within 180 days from the date the filing is  
14 completed, unless he extends this limit under subsec-  
15 tion 6. If the superintendent denies or dismisses a  
16 filing, any further filing shall be deemed to be a  
17 new filing, subject to this public hearing require-  
18 ment.

19 11. Subsequent filing. A filer may not file a  
20 rate filing within 180 days of receiving a rate in-  
21 crease or decrease.

22 12. Procedure; rules. Subject to the applicable  
23 requirements of the Maine Administrative Procedure  
24 Act, Title 5, chapter 375, the superintendent may  
25 adopt rules establishing procedures for the adminis-  
26 tration of this section, including, but not limited  
27 to, procedures governing submission of petitions for  
28 intervenor status, prefiling of testimony and exhib-  
29 its, information requests, subpoenas, prehearing con-  
30 ferences and conduct of hearings.

31 13. Costs. For the purpose of determining wheth-  
32 er a filing meets the requirements of this section,  
33 the superintendent may employ staff personnel and  
34 outside consultants. The reasonable costs related to  
35 the review of workers' compensation rate filings, in-  
36 cluding conduct of the hearing, shall be borne by the  
37 advisory organization or insurer making the filing.



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1 are unfairly discriminatory. In addition, if the su-  
2 perintendent finds that a reasonable degree of compe-  
3 tition does not exist in a market, he may place it  
4 back under the prior approval system and determine  
5 insurance rates.

6 To encourage competition, the amendment enacts  
7 several mechanisms designed to give incentives to em-  
8 ployers to maintain safe workplaces and to ensure  
9 that employers with good records are not required to  
10 subsidize those with poor records. These include ex-  
11 perience rating, merit rating for employers too small  
12 to be experienced rated, scheduled rating and a sys-  
13 tem of surcharges for those with the poorest records.

14 The amendment establishes 2 insurance pools, the  
15 Accident Prevention Account and the Safety Pool.

16 The Accident Prevention Account is limited to em-  
17 ployers with a demonstrably poor safety record. The  
18 insurance rates provide for premium surcharges based  
19 on loss experience. The surcharges serve as an incen-  
20 tive to improve loss records, yet are limited to pre-  
21 vent rate increases so large that they threaten the  
22 employers' ability to stay in business.

23 The Safety Pool ensures that small employers with  
24 good safety records and loss experience are not  
25 relegated to the Accident Prevention Account solely  
26 because of their small size. These employers are  
27 least able to bargain for favorable insurance rates.  
28 A strong competitive market will lead to increased  
29 opportunities for these small employers to obtain in-  
30 surance in the voluntary market, but the Safety Pool  
31 exists as a safety mechanism for these employers.

32 To provide a reasonable transition period, maxi-  
33 mum rates are fixed at the current level until Janu-  
34 ary 1, 1987, and rates may not increase by more than  
35 10% in 1987 and 1988. The amendment also contains a  
36 "pass-through provision" whereby insurance carriers  
37 pass savings resulting from decreases in workers'

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1 compensation benefits along to employers through de-  
2 creased premiums.

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