

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE
4

5 Legislative Document

No. 1343

6
7 H.P. 937

House of Representatives, April 18, 1985

8 Referred to the Committee on Business and Commerce. Sent up for
9 concurrence and ordered printed.

10 EDWIN H. PERT, Clerk

Presented by Speaker Martin of Eagle Lake.

11 Cosponsored by President Pray of Penobscot, Senator Dutremble of
York and Representative Murray of Bangor.

12 STATE OF MAINE
13

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

17 AN ACT to Establish Competitive Insurance
18 Rating under the Maine Workers'
19 Compensation System.
20

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

23 Sec. 1. 5 MRSA §12004, sub-§8, ¶A, sub-¶(26) is
24 enacted to read:

25 (26) Workers' Safety Pool Legislative 24-A MRSA
26 Compensation Board of Per Diem §2350
27 Directors

28 Sec. 2. 24-A MRSA c. 25, first 2 lines are re-
29 pealed and the following enacted in their place:

30 CHAPTER 25

31 RATES AND RATING ORGANIZATIONS

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SUBCHAPTER I

GENERAL PROVISIONS

Sec. 3. 24-A MRSA §2302, sub-§3, as enacted by PL 1969, c. 132, §1, is repealed and the following enacted in its place:

3. Workers' compensation shall first be subject to subchapter II, but any other parts of this chapter and Title 39 not inconsistent with those sections shall also apply.

Sec. 4. 24-A MRSA §2303, sub-§1, ¶F, as enacted by PL 1983, c. 551, §1, is repealed.

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

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:

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

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

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

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

1 5. Create improvements. To improve availabili-
2 ty, fairness and reliability of insurance; and

3 6. Assuring marketing practices. To encourage
4 the most efficient and economic marketing practices.

5 §2333. Definitions

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

9 1. Advisory organization. "Advisory organiza-
10 tion" means an entity which has 2 or more member in-
11 surers or is controlled either directly or indirectly
12 by 2 or more insurers and which assists insurers in
13 rate-making related activities.

14 A. Two or more insurers having a common owner-
15 ship or operating in this State under common man-
16 agement or control, constitute a single insurer
17 for the purpose of this definition.

18 B. "Advisory organization" does not include a
19 joint underwriting association, an actuarial or
20 legal consultant or an employee of an insurer or
21 insurers under common control or management or
22 their employees or manager.

23 2. Classification system. "Classification sys-
24 tem" or "classification" means the insurance plan,
25 system or arrangement for recognizing differences in
26 exposure to hazards among industries, occupations or
27 operations of insurance policyholders.

28 3. Competitive market. "Competitive market"
29 means a market which has not been found to be noncom-
30 petitive pursuant to section 2335.

31 4. Expenses. "Expenses" means that portion of a
32 rate attributable to acquisition, field supervision
33 and collection expenses, general expenses and taxes,
34 licenses and fees.

35 5. Experience rating. "Experience rating" means
36 a rating procedure utilizing past insurance experi-
37 ence of the individual policyholder to forecast fu-

1 ture losses by measuring the policyholder's loss ex-
2 perience against the loss experience of policyholders
3 in the same classification to produce a prospective
4 premium credit, debit or unity modification.

5 6. Loss trending. "Loss trending" means a pro-
6 cedure for projecting developed losses to the average
7 date of loss for the period during which the policies
8 are to be effective.

9 7. Market. "Market" means the interaction be-
10 tween buyers and sellers of workers' compensation in-
11 surance within this State pursuant to this chapter.

12 8. Noncompetitive market. "Noncompetitive mar-
13 ket" means a market for which there is a ruling in
14 effect pursuant to section 2334 that a reasonable de-
15 gree of competition does not exist.

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

20 10. Rate. "Rate" means the cost of insurance
21 per exposure base unit, prior to any application of
22 individual risk variation based on loss or expense
23 considerations. "Rate" does not include minimum pre-
24 miums.

25 11. Residual market mechanism. "Residual market
26 mechanism" means an arrangement involving participa-
27 tion by insurers in the equitable apportionment among
28 them of insurance which may be afforded applicants
29 who are unable to obtain insurance through ordinary
30 methods. It includes the Assigned Risk Pool and the
31 Safety Pool.

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

37 13. Statistical plan. "Statistical plan" means
38 the plan, system or arrangement used to collect data.

1 14. Superintendent. "Superintendent" means the
2 Superintendent of Insurance.

3 15. Supplementary rate information. "Supplemen-
4 tary rate information" means a manual or plan of
5 rates, classification system, rating schedule, mini-
6 imum premium, policy fee, rating rule, rating plan and
7 any other similar information needed to determine the
8 applicable premium for an insured.

9 16. Supporting information. "Supporting infor-
10 mation" means the experience and judgment of the
11 filer and the experience or data of other insurers or
12 organizations relied on by the filer, the interpreta-
13 tion of any statistical data relied on by the filer,
14 descriptions of methods used in making the rates and
15 any other similar information required to be filed by
16 the superintendent.

17 §2334. Scope of application

18 This subchapter applies to workers' compensation
19 insurance and employers' liability insurance written
20 in connection therewith.

21 §2335. Competitive market

22 A competitive market is presumed to exist unless
23 the superintendent, after hearing, determines that a
24 reasonable degree of competition does not exist in
25 the market.

26 1. Order. On that determination, the superin-
27 tendent shall issue an order to that effect.

28 2. Time. The order shall specify its expiration
29 date. That date shall be a date deemed reasonable by
30 the superintendent to insure that the market has re-
31 turned to a reasonable degree of competition.

32 3. Basis. In determining whether a reasonable
33 degree of competition exists, the superintendent
34 shall consider relevant tests of workable competition
35 pertaining to market structure, market performance
36 and market conduct, and the rating criteria of sec-
37 tion 2338.

1 §2336. Rate standards

2 The following standards shall be used in deter-
3 mining the reasonableness of rates for insurance un-
4 der this chapter.

5 1. General. Rates shall not be excessive, inad-
6 equate or unfairly discriminatory.

7 2. Excessiveness. Excessive rates shall be de-
8 termined as follows.

9 A. Rates in a competitive market are presumed
10 not to be excessive.

11 B. Rates in a noncompetitive market are exces-
12 sive if the rate is likely to produce a profit
13 that is unreasonably high for the insurance
14 provider or if expenses included in the rate are
15 unreasonably high in relation to services ren-
16 dered.

17 3. Inadequacy. Rates are inadequate if:

18 A. They are insufficient to sustain projected
19 losses and expenses; and

20 B. The use of those rates, if continued, would:

21 (1) Endanger the solvency of the insurer;

22 (2) Tend to unreasonably limit competition;
23 or

24 (3) Tend to create a monopoly in the mar-
25 ket.

26 4. Unfair discrimination. Unfair discrimination
27 exists if, after allowing for practical limitations,
28 rate price differentials fail to reflect equitably
29 the differences in expected losses and expenses. A
30 rate is not unfairly discriminatory because different
31 premiums result for policyholders with like loss ex-
32 posures but different expenses, or like expenses but
33 different loss exposures, as long as the rate re-
34 fects those differences with reasonable accuracy.

1 §2337. Payment of dividends

2 The following provisions apply to the payment of
3 dividends, savings or unabsorbed premium deposits al-
4 lowed or returned by insurers to their policyholders.

5 1. Discrimination. It shall not unfairly dis-
6 criminate between policyholders.

7 2. Rating plan. A plan for payment is not con-
8 sidered a rating plan or system.

9 §2338. Rating criteria

10 In determining whether rates comply with the
11 standards of section 2335, the following criteria
12 shall apply.

13 1. Basic factors in rates. Due consideration
14 may be given to past and prospective loss and expense
15 experience within and outside of this State, to ca-
16 stastrophe hazards and contingencies, to events or
17 trends within and outside of this State, to loadings
18 for leveling premium rates over time for dividends or
19 savings to be allowed or returned by insurers to
20 their policyholders, members or subscribers and to
21 all other relevant factors.

22 2. Expenses. The expense provisions included in
23 the rates to be used by an insurer shall reflect the
24 operating methods of the insurer and, so far as it is
25 credible, its own actual and anticipated expense ex-
26 perience.

27 3. Profit. The rates may contain provisions for
28 reasonable profit. In determining the reasonableness
29 of profit, consideration shall be given to all in-
30 vestment income attributable to premiums and the re-
31 serves associated with those premiums.

32 §2339. Uniform administration of classifications;
33 reporting of rates and other information

34 1. Uniform classification system. The superin-
35 tendent shall develop and establish, by rule, a uni-
36 form classification system and uniform experience
37 rating plan.

1 A. Every workers' compensation insurer, includ-
2 ing self-insurers, shall adhere to that uniform
3 classification system and uniform experience rat-
4 ing plan.

5 B. An insurer may develop subclassifications of
6 the uniform classification system on which a rate
7 may be made.

8 (1) A subclassification must be filed with
9 the superintendent 30 days prior to its use.

10 (2) The superintendent may disapprove a
11 subclassification if:

12 (a) The insurer fails to demonstrate
13 that the data produced may be reported
14 consistent with the uniform statistical
15 plan and classification system; or

16 (b) The proposed subclassification:

17 (i) Is not reasonably related to
18 the exposure;

19 (ii) Is not adequately defined;

20 (iii) Has not been shown to dis-
21 tinguish among insureds based on
22 the potential for or hazard of
23 loss; or

24 (iv) Is likely to be unfairly
25 discriminatory.

26 2. Statistical advisory organization. The su-
27 perintendent may designate an advisory organization
28 to assist him in gathering, compiling and reporting
29 relevant statistical information. Every workers'
30 compensation insurer shall record and report its
31 workers' compensation experience to a designated ad-
32 visory organization as set forth in the uniform sta-
33 tistical plan.

34 3. Manual rules. The superintendent shall de-
35 velop and establish, by rule, manual rules reasonably
36 related to the recording and reporting of data pursu-

1 ant to a uniform statistical plan, uniform experience
2 rating plan and the uniform classification system.

3 A. Every workers' compensation insurer shall ad-
4 here to the approved manual rules and experience
5 rating plan in writing and reporting its busi-
6 ness.

7 B. No insurer may agree with any other insurer
8 or with an advisory organization to adhere to
9 manual rules which are not reasonably related to
10 the recording and reporting of data pursuant to
11 the uniform classification system or the uniform
12 statistical plan.

13 §2340. Filing of rates and other rating information

14 Every insurer shall file with the superintendent
15 all rates and supplementary rate information which is
16 to be used in this State, except as provided in sec-
17 tion 2341.

18 1. Competitive markets. In a competitive mar-
19 ket, rates and supplementary rate information shall
20 be filed not later than 5 days after its effective
21 date.

22 A. If the superintendent finds, after notice and
23 hearing, that an insurer's rates require closer
24 supervision because of the insurer's financial
25 condition or unfairly discriminatory rating prac-
26 tices, he may require prefiling of rates.

27 (1) In that event, the insurer shall file
28 with the superintendent at least 30 days be-
29 fore the effective date all such rates and
30 such supplementary rate information and sup-
31 porting information as prescribed by the su-
32 perintendent.

33 (2) On application by the filer, the super-
34 intendent may authorize an earlier effective
35 date for good cause.

36 2. Noncompetitive market. In a noncompetitive
37 market, rates and supplementary rate information
38 shall be filed and shall not take effect until ap-

1 proved by the superintendent.

2 A. The filing shall include the information re-
3 quired in a filing under Title 39, section 22-C,
4 subsections 3, 4 and 5.

5 B. The provisions of this Title and Title 39,
6 section 22-C, subsections 7, 8, 9, 10, 11 and 12
7 apply.

8 §2341. Uniform experience rating plan

9 An experience rating plan shall contain reason-
10 able eligibility standards and provide adequate in-
11 centives for loss prevention and for sufficient pre-
12 mium differentials to encourage safety.

13 1. Exclusive plan. An experience rating plan
14 shall be the exclusive means for providing prospec-
15 tive premium adjustment based upon the past claim ex-
16 perience of an individual insured.

17 2. Retrospective premium adjustments. Insurers
18 may file rating plans that provide for retrospective
19 premium adjustments based on an insured's past expe-
20 rience.

21 §2342. Schedule rating

22 An insurer may file a schedule rating plan which
23 permits modification to the otherwise applicable pre-
24 mium after the application of experience rating, but
25 before any premium discounts and loss constants.

26 1. Disapproval. The superintendent may disap-
27 prove any schedule rating plan, pursuant to section
28 2343, if the plan is unfairly discriminatory or if
29 the filer has failed to demonstrate that experience
30 can be accurately reported.

31 2. Standards. The superintendent may, by rule,
32 set maximum credits and debits and other reasonable
33 standards for schedule rating plans.

34 §2343. Approval of rates

35 The following provisions apply to approval of

1 rates.

2 1. Time. The following time limits apply.

3 A. A rate may be approved at any time subsequent
4 to the effective date.

5 B. A rate subject to prefiling under section
6 2340, subsection 1, may also be approved before
7 the effective date.

8 C. A rate for a noncompetitive or residual mar-
9 ket shall not become effective until approved by
10 the superintendent.

11 2. Bases of approval. The bases for approval or
12 disapproval are as follows.

13 A. The superintendent shall disapprove a rate if
14 the insurer fails to comply with the filing re-
15 quirements under section 2340.

16 B. The superintendent shall disapprove a rate
17 for use in a competitive market if he finds that
18 the rate is inadequate or unfairly discriminatory
19 under section 2336.

20 C. The superintendent shall disapprove a rate
21 for use in a noncompetitive market if he finds
22 that it has failed to meet the standards of Title
23 39, section 22-C, subsection 6, in addition to
24 all other requirements.

25 D. The superintendent shall disapprove a rate
26 for use in a residual market if he finds that the
27 rate is inadequate or unfairly discriminatory un-
28 der section 2336.

29 3. Disapproval procedure; order; interim rates.
30 The superintendent may disapprove rates in the fol-
31 lowing manner.

32 A. If the superintendent believes that rates of
33 an insurer or in a market violate the standards
34 of section 2335 or 2336 or any other applicable
35 requirement of this Act, he may require that that
36 insurer or the insurers in that market file sup-

1 porting information in support of existing rates.
2 If, after reviewing the supporting rate informa-
3 tion, he continues to believe that the rates may
4 violate these requirements, he shall call a hear-
5 ing prior to any disapproval.

6 B. The superintendent may disapprove, without
7 hearing, rates prefiled pursuant to section 2340
8 that have not become effective. The insurer whose
9 rates have been disapproved shall be given a
10 hearing upon a written request made within 30
11 days after the disapproval order.

12 C. Every insurer or advisory organization shall
13 provide within this State reasonable means where-
14 by, on written request, any person aggrieved by
15 the application of its rates or filings may be
16 heard on the manner in which the rating system
17 has been applied.

18 (1) If the insurer or advisory organization
19 fails to grant or reject the request within
20 30 days, an applicant may proceed as if the
21 application had been rejected.

22 (2) Any party aggrieved by the action of
23 the insurer or advisory organization on that
24 request may, within 30 days after written
25 notice of that action, appeal to the super-
26 intendent. After a hearing held on not less
27 than 10 days' written notice to the appel-
28 lant and to the insurer or advisory organi-
29 zation, the superintendent may affirm, modi-
30 fy or reverse that action.

31 D. If the superintendent disapproves a rate, he
32 shall issue an order specifying in what respects
33 it fails to meet the requirements of this Act and
34 stating when that rate shall be discontinued.

35 (1) The order shall be issued within 30
36 days after the close of the hearing or with-
37 in such reasonable time extension as the su-
38 perintendent may fix.

39 (2) The order may include a provision for
40 premium adjustment for the period after the

1 effective date of the order for policies in
2 effect on that date.

3 E. When an insurer has no legally effective
4 rates, on its request, the superintendent may
5 specify interim rates for the insurer based on
6 the rates in effect immediately prior to a disap-
7 proval or, if none, on reasonable rates.

8 (1) The superintendent may order that a
9 specified portion of the premiums be placed
10 in an escrow account approved by him.

11 (2) When new rates become legally effec-
12 tive, the superintendent shall order the
13 escrowed funds or any overcharge in the in-
14 terim rates to be distributed appropriately.
15 Refunds of less than \$10 per policyholder
16 shall not be required.

17 §2344. Monitoring competition

18 The superintendent shall monitor the degree of
19 competition in this State.

20 1. Sources. He shall utilize existing relevant
21 information, analytical systems and other sources,
22 cause or participate in the development of new rele-
23 vant information, analytical systems and other
24 sources or rely on some combination thereof.

25 2. Methods. These activities may be conducted
26 internally within the Bureau of Insurance, in cooper-
27 ation with other state insurance departments, through
28 outside contractors and in any other appropriate man-
29 ner.

30 §2345. Licensing advisory organizations

31 No advisory organization may provide services re-
32 lating to insurance subject to this chapter and no
33 insurer may utilize the services of an organization
34 for those purposes, unless the organization has ob-
35 tained a license under this section.

36 1. Availability of services. No licensed advis-
37 ory organization may refuse to supply services for

1 which it is licensed in this State to an insurer au-
2 thorized to do business in this State and offering to
3 pay the fair and usual compensation for the services.

4 2. Licensing. In addition to the requirements
5 contained in section 2321, the advisory organization
6 shall include in its application the following:

7 A. A statement showing its technical qualifica-
8 tions for acting in the capacity for which it
9 seeks a license; and

10 B. Other relevant information and documents that
11 the superintendent may require.

12 3. Change of circumstances. An advisory organi-
13 zation which has applied for a license shall notify
14 the superintendent of every material change in the
15 facts or documents on which its application was
16 based. An amendment to a document shall be filed at
17 least 30 days before it becomes effective.

18 4. Granting of license. If the superintendent
19 finds that the applicant and the natural persons
20 through whom it acts are competent, trustworthy and
21 technically qualified to provide the services pro-
22 posed and that all requirements are met, he shall is-
23 ssue a license specifying the authorized activity of
24 the applicant. He shall not issue a license if the
25 proposed activity would tend to create a monopoly or
26 to substantially lessen competition in the market.

27 5. Duration. Licenses shall remain in effect un-
28 til the licensee withdraws from the State or until
29 the license is suspended or revoked.

30 6. Suspension or revocation. The license of an
31 advisory organization which does not comply with the
32 requirements and standards of this chapter may be
33 suspended or revoked by the Administrative Court.

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

36 1. Restraint of trade. No insurer or advisory
37 organization may make any arrangement with any other
38 insurer, advisory organization or other person which

1 has the purpose or effect of unreasonably restraining
2 trade or lessening competition in the business of in-
3 surance.

4 2. Rate agreements. No insurer may agree with
5 any other insurer or with an advisory organization to
6 adhere to or use a rate or rating plan, other than
7 the uniform experience rating plan or rating rule.

8 3. Proof of agreement. The fact that 2 or more
9 insurers, whether or not members or subscribers of an
10 advisory organization, use the same rule, rating
11 plan, rating schedule, rating rule, policy form, rate
12 classification, underwriting rule, survey or inspec-
13 tion or similar material is not sufficient in itself
14 to support a finding that an agreement exists.

15 4. Common ownership. Two or more insurers having
16 a common ownership or operating in this State under
17 common management or control may act as if they con-
18 stituted a single insurer.

19 5. Advisory organizations. No advisory organiza-
20 tion may:

21 A. Compile or distribute recommendations relat-
22 ing to rates that include expenses, other than
23 loss adjustment expenses or profit; or

24 B. File rates, supplementary rate information or
25 supporting information on behalf of an insurer.

26 §2347. Advisory organizations; filing requirements

27 An advisory organization shall file with the su-
28 perintendent every pure premium rate, manual of rat-
29 ing rules, rating schedule and change, amendment or
30 modification of them, proposed for use in this State,
31 at least 10 days before it is distributed to members,
32 subscribers or others.

33 §2348. Residual market mechanism

34 The residual market mechanism shall be composed
35 of an assigned risk pool and a safety pool.

36 1. Assigned risk pool. The assigned risk pool

1 shall be an insurance plan that provides for the eg-
2 uitable apportionment among insurers of insurance
3 which may be afforded applicants who are in good
4 faith entitled to but unable to procure that insur-
5 ance through ordinary methods because of their demon-
6 strated accident frequency problem, measurably ad-
7 verse loss ratio over a period of years or demon-
8 strated attitude of noncompliance with safety re-
9 quirements.

10 A. All insurers authorized to write workers'
11 compensation and employers' liability insurance
12 in this State shall participate in the plan.

13 B. The plan shall include an experience rating
14 system whereby the premium of each employer in
15 the pool is modified either prospectively or ret-
16 rospectively. This experience modification shall
17 only be applied to the base rate of the plan. The
18 plan shall provide for premium surcharges for em-
19 ployers based on their specific loss experience
20 within a specified period or other factors which
21 are reasonably related to their risk of loss. The
22 sensitivity of a rating system may vary by size
23 of the risk involved.

24 C. The plan may include subsidization of the
25 pool's loss experience by employers not in the
26 pool, consistent with this chapter and sound ac-
27 tuarial principles.

28 D. An employer shall be eligible for insurance
29 from the pool if:

30 (1) He has a loss ratio of greater than
31 1.25 over the last 3 years for which data is
32 available; and

33 (2) He has attempted to obtain insurance in
34 the voluntary market and has been refused by
35 at least 5 insurers which write that insur-
36 ance in this State.

37 E. Section 2325 shall apply to the pool and
38 plan.

39 F. A designated advisory organization shall sub-

1 mit a plan for the superintendent's approval
2 within 30 days of the effective date of this Act.

3 (1) The base rate for this initial plan
4 shall be the workers' compensation rates ap-
5 proved by the superintendent and effective
6 March 2, 1981, and premium surcharges in the
7 initial plan may not exceed 10% of the base
8 rate applied.

9 (2) Premium surcharges under paragraph B,
10 may not exceed 20% of the base rate for that
11 employer and may not increase by more than
12 50% of the prior year's premium surcharge in
13 any one year.

14 2. Safety pool. The safety pool shall be an in-
15 surance plan that provides for an alternative source
16 of insurance for small employers with good safety
17 records who are unable to obtain reasonably priced
18 insurance in the voluntary market.

19 A. There is formed the Safety Fund, which is in-
20 tended to operate within the framework of the
21 voluntary insurance market.

22 (1) The fund is not a state fund and the
23 State shall have no proprietary interest in
24 the fund or contributions made to it.

25 (2) The fund shall be exempt for any bud-
26 getary control or supervision by state agen-
27 cies, except to the extent an insurance com-
28 pany is so supervised or controlled.

29 B. An employer shall be eligible for the fund if
30 he:

31 (1) Develops an annual pure premium no
32 greater than \$7,500; and

33 (2) Has a loss ratio which:

34 (a) Does not exceed 1.0 over the last
35 3 years for which data is available; or

36 (b) Is greater than 1.0 but less than

1 1.25 over the last 3 years for which
2 data is available and he receives a
3 vote of approval of at least 7 members
4 of the board; or

5 (3) Has been in business for less than 3
6 years and agrees to pay a surcharge on in-
7 surance equal to 10% of the annual premium
8 or \$750, whichever is greater. The surcharge
9 shall be returned if the employer has loss
10 ratio of less than 1.25 over the first 3
11 years of membership in the pool.

12 C. A board of directors shall oversee and direct
13 the fund. The board shall be comprised of 9 mem-
14 bers: Three shall be employers; 2 shall be em-
15 ployees of employers in the fund; 3 shall be ex-
16 ecutives of insurance companies which write work-
17 ers' compensation insurance in this State; and
18 one shall be a public member. The Commissioner of
19 Business, Occupational and Professional Regula-
20 tion shall be a nonvoting member, ex officio.

21 (1) The Governor shall appoint the members
22 of the board.

23 (2) Members shall serve for a term of 3
24 years. No member of the board may serve for
25 more than 2 full consecutive terms, except
26 for the commissioner.

27 (3) The Governor's initial appointees to
28 the board shall serve as follows: One em-
29 ployer, one employee and one insurance com-
30 pany executive shall be appointed for 3
31 years; one employer, the public member and
32 one insurance company executive shall be ap-
33 pointed for 2 years; and one employer and
34 one insurance company executive shall be ap-
35 pointed for one year.

36 (4) The chairman shall be elected by the
37 board annually. He may not be an insurance
38 company executive.

39 (5) A member appointed to fill a vacancy
40 shall serve for the remainder of the unex-

1 pired term.

2 (6) Members of the board shall be compen-
3 sated according to Title 5, chapter 379.

4 D. The board shall:

5 (1) Apply for approval of changes in the
6 manual rates to be charged to members;

7 (2) Expel those members who do not meet the
8 criteria for continued membership;

9 (3) Issue an annual report to members;

10 (4) Have an annual audit by a duly quali-
11 fied certified public accountant; and

12 (5) Meet at least quarterly.

13 E. The board may:

14 (1) Reinsure all or part of a risk;

15 (2) Direct deposit or investment of money
16 of the fund, in a reasonable and prudent
17 manner;

18 (3) Order dividends or credits against pre-
19 miums to be issued to fund members, to the
20 extent there is an excess of assets over li-
21 abilities, necessary reserves and a reason-
22 able surplus for a catastrophe hazard;

23 (4) Hire personnel to carry out the func-
24 tions and duties of the board;

25 (5) Sue and be sued;

26 (6) Enter into contracts and obligations;

27 (7) Adopt and amend rules relating to the
28 conduct of its business, subject to Title 5,
29 chapter 375; and

30 (8) Conduct such other business as may come
31 before the board from time to time.

1 F. The Safety Fund shall be subject to Title 39,
2 section 22-C and shall be considered to be an in-
3 surer under this chapter.

4 G. All insurers authorized to write workers'
5 compensation and employer's liability insurance
6 in this State may participate in a plan providing
7 for insurance to members of the Safety Fund.

8 (1) Every insurance company which is a ser-
9 vicings carrier of the assigned risk pool
10 shall also be a servicing carrier of the
11 Safety Fund.

12 (2) Insurance companies servicing the fund
13 shall:

14 (a) Maintain, independent of all other
15 data, all records which it is required
16 to maintain on insureds in the volun-
17 tary market and to make those records
18 available to the board as it may re-
19 quest;

20 (b) Investigate claims, establish loss
21 reserves, establish and maintain
22 records related to the expenses gener-
23 ated by the coverage of employers in
24 the fund and maintain other records as
25 required by the board or superintendent
26 in relation to claims against the fund;

27 (c) Fully service the employers in the
28 fund it insures to the same degree and
29 in the same manner as it services the
30 employers it insures in the voluntary
31 market; and

32 (d) Perform other responsibilities re-
33 quired by the board.

34 (3) For its services, an insurance company
35 shall receive a percentage of the total pre-
36 mium of the employers in the fund whose ac-
37 counts it services.

38 (a) The board, after notice and hear-

1 ing, shall establish the percentage of
2 premium.

3 (i) The percentage shall reason-
4 ably relate to the costs of ser-
5 vicizing insurance in the competi-
6 tive market.

7 (ii) The board may adjust the
8 percentage to reflect unusual
9 characteristics or costs caused by
10 the nature of the fund.

11 (iii) The percentage may not ex-
12 ceed the percent of premium re-
13 ceived by companies for servicing
14 the assigned risk pool.

15 H. For 3 years after the effective date of this
16 Act, the insurance rates of the fund shall be the
17 workers' compensation manual rates approved by
18 the superintendent and effective March 2, 1981.

19 I. An employer who voluntarily leaves the fund
20 may not reenter for at least 3 years from the
21 date on which it left, without approval of the
22 board, unless he has attempted to obtain insur-
23 ance in the voluntary market and has been refused
24 by at least 5 insurers who write that insurance
25 in this State.

26 J. A member of the fund who generates an annual
27 pure premium in excess of \$7,500 shall be ordered
28 to leave the fund.

29 K. A member of the fund who develops a loss ra-
30 tio exceeding 1.25 for the last 3 years for which
31 data is available shall be ordered to leave the
32 fund. A copy of the order shall be submitted to
33 the superintendent and the member shall be placed
34 in the assigned risk pool.

35 §2349. Examinations

36 1. Examination. The superintendent may examine
37 an insurer, advisory organization or residual market
38 mechanism as he deems necessary to ascertain compli-

1 ance with this chapter.

2 2. Records. An insurer, advisory organization
3 and residual market mechanism shall maintain reason-
4 able records of the type and kind reasonably adapted
5 to its method of operation containing its experience
6 or the experience of its members, including the data,
7 statistics or information collected or used by it in
8 its activities.

9 A. These records shall be available at all rea-
10 sonable times.

11 B. These records shall be maintained in an of-
12 fice within this State or shall be made available
13 to the superintendent at his office on reasonable
14 notice.

15 3. Cost. The reasonable cost of an examination
16 shall be paid by the examined party on presentation
17 of a detailed account of those costs.

18 4. Report. In lieu of an examination, the super-
19 intendent may accept the report of an examination by
20 the insurance supervisory official of another state,
21 made pursuant to the laws of that state.

22 §2350. Penalties

23 1. Civil penalties. A person or organization who
24 has violated a provision of this chapter, shall be
25 assessed a civil penalty of not more than \$1,000 for
26 each violation, except that where a violation is
27 willful, a civil penalty of not more than \$10,000
28 shall be assessed for each violation. These penalties
29 may be in addition to any other penalty provided by
30 law.

31 2. Separate violation. For purposes of this sec-
32 tion, an insurer using a rate for which that insurer
33 has failed to file the rate, supplementary rate in-
34 formation or supporting information, as required by
35 this chapter, shall have committed a separate viola-
36 tion for each day that failure continues.

37 3. License. The license of an advisory organiza-
38 tion or insurer which fails to comply with an order

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

3 §2351. Judicial review

4 An order, regulation or decision of the superin-
5 tendent made after a hearing shall be subject to ju-
6 dicial review in accordance with section 236.

7 §2352. Rate change limitations

8 During the first 12-month period after the effec-
9 tive date of this Act, each insurer's rates shall not
10 exceed the workers' compensation rates approved by
11 the Superintendent of Insurance effective March 2,
12 1981. During the 2nd and 3rd 12-month period after
13 the effective date of this Act, each insurer's rates
14 shall not exceed the rates approved by the Superin-
15 tendent of Insurance effective March 2, 1981, in-
16 creased by 10% in the 2nd 12-month period and an ad-
17 ditional 10% in the 3rd 12-month period.

18 §2353. Nonseverability

19 In the event that any portion of this Act is held
20 invalid, it is the intent of the Legislature that the
21 entire Act is invalidated.

22 §2354. Sunset

23 This subchapter shall be repealed on January 1,
24 1989.

25 Sec. 6. 39 MRSA §22-B, as amended by PL 1983, c.
26 659, §§1 and 2, is repealed.

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

29 13. Application. This section shall not apply to
30 insurance policies or rates in a voluntary market and
31 shall only apply as provided in Title 24-A, chapter
32 25, subchapter II. This subsection shall be repealed
33 on January 1, 1989.

34 Sec. 8. Effective date. This Act shall apply on-
35 ly as to injuries occurring on and after its effec-

1 tive date, which shall be January 1, 1986.

2 Sec. 9. Sunset. This Act shall be repealed on
3 January 1, 1989.

4 Sec. 10. Appropriation. The following funds are
5 appropriated from the General Fund to carry out the
6 purposes of this Act.

	<u>1985-86</u>	<u>1986-87</u>
7		
8	<u>WORKERS' COMPENSATION</u>	
9	<u>COMMISSION</u>	
10		
11	Safety Pool Board of Di-	
12	rectors	
13	All Other	\$10,800
14	Provides for per di-	\$10,800
15	em and expenses for	
	the board.	

16 STATEMENT OF FACT

17 The purpose of this bill is to establish broad
18 competition in the workers' compensation insurance
19 market in this State. This bill is based on the
20 principles set out in the recommendations of the
21 Speaker's Select Committee on Workers' Compensation.

22 The bill accomplishes this goal of a competitive
23 market by allowing workers' compensation insurance
24 companies to openly compete among each other for
25 business and rates. To insure that there is some re-
26 sidual check on the competitive market, the bill pro-
27 vides for antitrust and anticompetition safeguards
28 and allows the Superintendent of Insurance to monitor
29 and investigate the competitive market to insure con-
30 tinued competition. If the superintendent finds that
31 an insurer or a specific market has become noncompet-
32 itive, he may place it back under regulated control
33 and determine the rates for insurance.

34 To insure the competitive market, the bill also
35 establishes 2 insurance pools: The Assigned Risk
36 Pool and the Safety Pool.

1 The Assigned Risk Pool is specifically limited to
2 employers who have a demonstrated poor safety record
3 and its insurance rates provide for premium
4 surcharges based on the poor loss experience. Those
5 surcharges are limited to prevent massive increases
6 in insurance rates for these employers, but still
7 provide a strong incentive for improvements in their
8 loss experience. Unlike the present Assigned Risk
9 Pool, the bill will insure that employers with a poor
10 loss experience will be paying insurance rates that
11 reflect that experience, and that the pool is not
12 used as a dumping ground for small employers.

13 The Safety Pool is designed for the smaller em-
14 ployers who have a good safety record and loss expe-
15 rience. The eligibility requirements are set to in-
16 sure both the integrity of the pool and its availa-
17 bility to those employers who will have the greatest
18 difficulty in effectively competing in the voluntary
19 competitive market. This pool will provide dividends
20 or credits against premiums to its members based on
21 their loss experience. In this manner, the Safety
22 pool will provide a baseline against which the rates
23 in the voluntary competitive market may be measured.
24 It will also assure that those employers least able
25 to bargain for favorable insurance rates will have a
26 reasonable alternative for insurance.

27 Finally, the bill provides for reasonable control
28 of insurance rate increases during the transition pe-
29 riod and a sunset provision on the entire Act.

30

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