

# MAINE STATE LEGISLATURE

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L.D. 1634

(Filing No. H-394 )

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

HOUSE AMENDMENT "C" to H.P. 1127, L.D. 1634,  
Bill, "AN ACT to Improve the Workers' Compensation  
System and Reform the Rate-making Process."

Amend the bill in the emergency preamble by in-  
serting after the 5th paragraph the following:

'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 in-  
surance, insurers who provide that insurance and em-  
ployees 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'

Further amend the bill by inserting after the en-  
acting clause the following:

'PART A'

Further amend the bill in section 4 in the 4th  
line from the end (page 3, line 18 in L.D.) by strik-  
ing out the following: "§88" and inserting in its  
place the following: '§89'

Further amend the bill in section 6 in that part  
designated "§42-A." in subsection 5, in the 4th and  
5th lines (page 5, lines 9 and 10 in L.D.) by strik-  
ing out the following: "include," and inserting in  
its place the following: 'include'

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1 Further amend the bill in section 7 in that part  
2 designated "§61." in subsection 1, in the 2nd line  
3 (page 5, line 22 in L.D.) by striking out the under-  
4 lined word "as"

5 Further amend the bill in section 7 in that part  
6 designated "§61." in subsection 3, in the 4th line  
7 (page 6, line 36 in L.D.) by striking out the under-  
8 lined word "shall" and inserting in its place the un-  
9 derlined word 'must'

10 Further amend the bill in section 7 in that part  
11 designated "§62." in subsection 2, in the first and  
12 2nd lines (page 7, lines 27 and 28 in L.D.) by strik-  
13 ing out the underlined words "is authorized to" and  
14 inserting in their place the underlined word 'may'

15 Further amend the bill in section 7 in that part  
16 designated "§62." in subsection 3, paragraph C, sub-  
17 paragraph (1) in the 2nd line (page 7, line 39 in  
18 L.D.) by striking out the underlined word "actual"  
19 and inserting in its place the underlined word  
20 'actual'

21 Further amend the bill in section 7 in that part  
22 designated "§63." in subsection 1, paragraph A, in  
23 the first line (page 8, line 34 in L.D.) by striking  
24 out the underlined word "shall" and inserting in its  
25 place the underlined word 'must'

26 Further amend the bill in section 7 in that part  
27 designated "§63." in subsection 1, paragraph D, in  
28 the 2nd line (page 9, line 5 in L.D.) by striking out  
29 the underlined words "shall be" and inserting in  
30 their place the underlined word 'is'

31 Further amend the bill in section 7 in that part  
32 designated "§63." in subsection 1, paragraph G, in  
33 the first line (page 9, line 24 in L.D.) by striking  
34 out the underlined word "shall" and inserting in its  
35 place the underlined word 'must'

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1 Further amend the bill in section 7 in that part  
2 designated "§63." in subsection 1, paragraph H, in  
3 the first line (page 9, line 31 in L.D.) by striking  
4 out the underlined word "shall" and inserting in its  
5 place the underlined word "may'

6 Further amend the bill in section 15 in that part  
7 designated "§53-A." in the last 2 lines (page 12,  
8 lines 22 and 23 in L.D.) by striking out the follow-  
9 ing: "Employment Security Commission" and inserting  
10 in its place the following: 'Maine Unemployment In-  
11 urance Commission'

12 Further amend the bill by striking out all of  
13 section 16 and inserting in its place the following:

14 'Sec. 16. 39 MRSA §54, as amended by PL 1983, c.  
15 479, §8, is further amended by adding at the end a  
16 new paragraph to read as follows:

17 This section does not apply to injured employees  
18 governed by section 54-A.'

19 Further amend the bill in section 17 in that part  
20 designated "§54-A." in the first paragraph in the 9th  
21 and 10 lines (page 12, lines 36 and 37 in L.D.) by  
22 striking out the the following: "Employment Security  
23 Commission" and inserting in its place the following:  
24 'Maine Unemployment Insurance Commission' and in the  
25 3rd line from the end (page 13, line 1 in L.D.) by  
26 striking out the underlined word "shall" and insert-  
27 ing in its place the underlined word "may'

28 Further amend the bill in section 17 in that part  
29 designated "§54-A." in the 2nd paragraph in the 9th  
30 and 10th lines from the end (page 13, lines 21 and 22  
31 in L.D.) by striking out the following: "Employment  
32 Security Commission" and inserting in its place the  
33 following: 'Maine Unemployment Insurance Commission'

34 Further amend the bill in section 17 in that part  
35 designated "§54-A." in the 2nd paragraph, in the 8th

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1 line from the end (page 13, line 23 in L.D.) by  
2 striking out the underlined word "shall" and insert-  
3 ing in its place the underlined word 'may'

4 Further amend the bill in section 17 in that part  
5 designated "54-A." by inserting after the 3rd para-  
6 graph the following:

7 'This section applies only to employees injured  
8 on and after the effective date of this section.'

9 Further amend the bill by striking out all of  
10 section 18 and inserting in its place the following:

11 'Sec. 18. 39 MRSA §55, as amended by PL 1983, c.  
12 479, §9, is further amended by adding at the end a  
13 new paragraph to read as follows:

14 This section does not apply to injured employees  
15 governed by section 55-A.'

16 Further amend the bill in section 19 in that part  
17 designated "55-A." in the first paragraph in the 11th  
18 and 12th lines (page 14, lines 15 and 16 in L.D.) by  
19 striking out the following: "Employment Security  
20 Commission" and inserting in its place the following:  
21 'Maine Unemployment Insurance Commission' and in the  
22 13th line (page 14, line 17 in the L.D.) by striking  
23 out the underlined word "shall" and inserting in its  
24 place the underlined word 'may'

25 Further amend the bill in section 19, in that  
26 part designated "55-A." by adding at the end a new  
27 paragraph to read as follows:

28 This section applies only to employees injured on  
29 and after the effective date of this section.'

30 Further amend the bill in section 20 in that part  
31 designated "§56." in the first paragraph in the 5th  
32 line from the end (page 15, line 1 in L.D.) by strik-  
33 ing out the following: "Employment Security

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1 Commission" and inserting in its place the following:  
2 'Maine Unemployment Insurance Commission'

3 Further amend the bill in section 20 in that part  
4 designated "§56." in the last paragraph in the 4th  
5 and 5th lines (page 16, lines 34 and 35 in L.D.) by  
6 striking out the following: "Employment Security  
7 Commission" and inserting in its place the following:  
8 'Maine Unemployment Insurance Commission' and in the  
9 14th line (page 17, line 5 in L.D.) by striking out  
10 the underlined word "shall" and inserting in its  
11 place the underlined word 'may' and in the 7th and  
12 8th lines from the end (page 17, lines 7 and 8 in  
13 L.D.) by striking out the following: "Employment Se-  
14 curity Commission" and inserting in its place the  
15 following: 'Maine Unemployment Insurance Commission'

16 Further amend the bill in section 22 in subsec-  
17 tion 8, in the first and 2nd lines (page 18, lines  
18 16 and 17 in L.D.) by striking out the underlined  
19 words "is not applicable" and inserting in their  
20 place the underlined words 'does not apply'

21 Further amend the bill in section 23 in that part  
22 designated "§57-B." in subsection 1, paragraph E, in  
23 the first line (page 19, line 4 in L.D.) by striking  
24 out the underlined word "shall" and inserting in its  
25 place the underlined word 'must'

26 Further amend the bill in section 23 in that part  
27 designated "§57-B." in subsection 4, paragraph A, in  
28 the 3rd line (page 20, line 8 in L.D.) by striking  
29 out the underlined word "shall" and inserting in its  
30 place the underlined word 'must'

31 Further amend the bill in section 23 in that part  
32 designated "§57-B." in subsection 6, paragraph A, in  
33 the first line (page 20, line 28 in L.D.) by striking  
34 out the underlined word "shall" and inserting in its  
35 place the underlined word 'must' and in the 4th line  
36 from the end (page 20, line 38 in L.D.) by striking  
37 out the underlined word "shall" and inserting in its

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1 place the underlined word 'must'

2 Further amend the bill in section 23 in that part  
3 designated "§57-B." in subsection 6, paragraph B,  
4 subparagraph (2), in the 4th and 5th lines (page 21,  
5 lines 23 and 24 in L.D.) by striking out the under-  
6 lined word "preceding" and inserting in its place the  
7 underlined word 'before'

8 Further amend the bill in section 23 in that part  
9 designated "§57-B." in subsection 6, paragraph F, in  
10 the first line (page 22, line 12 in L.D.) by striking  
11 out the underlined words "shall not be" and inserting  
12 in their place the underlined words 'are not'

13 Further amend the bill in section 23 in that part  
14 designated "§57-B." in subsection 7, paragraph A, in  
15 the first line (page 22, line 18 in L.D.) by striking  
16 out the underlined words "shall not be" and inserting  
17 in their place the underlined words 'is not'

18 Further amend the bill in section 23 in that part  
19 designated "§57-C." in subsection 2, in the 2nd line  
20 (page 24, line 11 in L.D.) by striking out the under-  
21 lined words "shall be" and inserting in their place  
22 the underlined word 'is'

23 Further amend the bill by striking out all of  
24 section 24 and inserting in its place the following:

25 'Sec. 24. 39 MRSA §58, as amended by PL 1983, c.  
26 479, §10, is further amended by adding at the end a  
27 new paragraph to read as follows:

28 This section does not apply to injured employees  
29 governed by section 58-A.'

30 Further amend the bill in section 25 in that part  
31 designated "58-A." in the first paragraph, in the  
32 10th line (page 26, line 6 in L.D.) by striking out  
33 the underlined word "State" and inserting in its  
34 place the underlined word 'state' and in the 11th and

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1 12th lines (page 26, lines 7 and 8 in L.D.) by strik-  
2 ing out the following: "Employment Security  
3 Commission" and inserting in its place the following:  
4 'Maine Unemployment Insurance Commission' and in the  
5 15th line (page 26, line 11 in L.D.) by striking out  
6 the underlined word "State" and inserting in its  
7 place the underlined word 'state' and in the 4th line  
8 from the end (page 26, line 14 in L.D.) by striking  
9 out the following: "that," and inserting in its place  
10 the following: 'that'

11 Further amend the bill in section 25, in that  
12 part designated "58-A." by inserting after the first  
13 paragraph the following:

14 'This section applies only to employees injured  
15 on and after the effective date of this section.'

16 Further amend the bill in section 25 in that part  
17 designated "§58-A." in subsection 2, in the 9th line  
18 (page 26, line 33 in L.D.) by striking out the fol-  
19 lowing: "step-children" and inserting in its place  
20 the following: 'stepchildren.'

21 Further amend the bill in section 28 in the first  
22 paragraph, in the first line (page 30, line 9 in  
23 L.D.) by striking out the underlined words "shall be"  
24 and inserting in their place the underlined word  
25 'are'

26 Further amend the bill in section 29 in that part  
27 designated "§82." in subsection 3, in the 3rd line  
28 (page 31, line 13 in L.D.) by striking out the under-  
29 lined words "shall have" and inserting in their place  
30 the underlined word 'has'

31 Further amend the bill in section 29 in that part  
32 designated "§82." in subsection 3, paragraph D, in  
33 the 2nd line (page 31, line 30 in L.D.) by striking  
34 out the underlined words "pursuant to" and inserting  
35 in their place the underlined word 'under'



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1 Further amend the bill in section 29 in that part  
2 designated "§83." in subsection 4, paragraph B, in  
3 the first line (page 35, line 19 in L.D.) by striking  
4 out the underlined words "shall be" and inserting in  
5 their place the underlined word 'are'

6 Further amend the bill in section 29 in that part  
7 designated "§85." in subsection 3, paragraph B, in  
8 the 2nd line (page 37, line 39 in L.D.) by striking  
9 out the underlined word "level"

10 Further amend the bill in section 29 in that part  
11 designated "§87." in subsection 4, in the 4th line  
12 (page 40, line 29) by striking out the underlined  
13 words "pursuant thereto" and inserting in their place  
14 the underlined words 'under this chapter'

15 Further amend the bill in section 29 in that part  
16 designated "§88." in subsection 1, in the 9th line  
17 (page 41, line 37 in L.D.) by striking out the under-  
18 lined word "shall" and inserting in its place the un-  
19 derlined word 'does'

20 Further amend the bill in section 31, subsection  
21 8, in the 4th line (page 44, line 36 in L.D.) by  
22 striking out the underlined words "pursuant to" and  
23 inserting in their place the underlined word 'under'

24 Further amend the bill in section 39 in that part  
25 designated "§100-A." in subsection 1, paragraph A, in  
26 the first line (page 48, line 27 in L.D.) by insert-  
27 ing after the underlined word "of" the following:  
28 'employment during'

29 Further amend the bill in section 43 by striking  
30 out all of that part designated "§110." and inserting  
31 in its place the following:

32 '§110. Witness and attorney's fees allowable

33 1. Injuries prior to effective date of sec-  
34 tion. When the commission or commissioner finds that

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1 an employee has instituted proceedings under this  
2 chapter on reasonable grounds and in good faith or  
3 that the employer through or under his insurance car-  
4 rier has instituted proceedings under this chapter,  
5 the commission or commissioner may assess the employ-  
6 er costs of witness fees and a reasonable attorney's  
7 fee, when in the commission's or commissioner's judg-  
8 ment the witnesses and the services of the attorney  
9 were necessary to the proper and expeditious disposi-  
10 tion of the case. The employer may not be assessed  
11 costs of an attorney's fee attributable to services  
12 rendered prior to one week after the informal confer-  
13 ence under section 94-B or, if the informal confer-  
14 ence is waived, services rendered prior to the date  
15 of that waiver, unless a party adverse to the employ-  
16 ee was so represented at that stage.

17 No attorney representing an employee in a proceeding  
18 under this Act may receive any fee from that client  
19 for an appearance before the commission, including  
20 preparation for that appearance, except as provided  
21 in section 94-B, subsection 3. Any attorney who vio-  
22 lates this paragraph shall lose his fee and shall be  
23 liable in a court suit to pay damages to the client  
24 equal to 2 times the fee charged for that client.

25 Notwithstanding any other provision of this subsec-  
26 tion, the employer may be assessed a reasonable at-  
27 torney's fee for services rendered to the employee in  
28 executing an agreement under section 100, subsection  
29 4, paragraph A.

30 This subsection does not apply to injured employees  
31 governed by subsection 2.

32 2. Injuries on or after effective date of sec-  
33 tion. If an employee prevails in any proceeding in-  
34 volving a controversy under this Act, the commission  
35 or commissioner may assess the employer costs of a  
36 reasonable attorney's fee and witness fees whenever  
37 the witness was necessary for the proper and expedi-  
38 tious disposition of the case.

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1 The employer may not be assessed costs of an attor-  
2 ney's fee attributable to services rendered prior to  
3 one week after the informal conference under section  
4 94-B or, if the informal conference is waived, ser-  
5 vices rendered prior to the date of that waiver, un-  
6 less a party adverse to the employee was so repre-  
7 sentated at that stage.

8 No attorney representing an employee who prevails in  
9 a proceeding under this Act may receive any fee from  
10 that client for an appearance before the commission,  
11 including preparation for that appearance, except as  
12 provided in section 83, subsection 7 and section  
13 94-B, subsection 3. Any attorney who violates this  
14 paragraph shall lose his fee and be liable in a court  
15 suit to pay damages to his client equal to 2 times  
16 the fee charged for that client.

17 This subsection applies only to employees injured on  
18 and after the effective date of this subsection.

19 A. For the purposes of this subsection, "pre-  
20 vail" means to obtain or retain more compensation  
21 or benefits under the Act than were offered to  
22 the employee by the employer in writing before  
23 the proceeding was instituted. If no such offer  
24 was made, "prevail" means to obtain or retain  
25 compensation or benefits under the Act.

26 B. Any employee, employer or insurance carrier  
27 involved in any proceeding involving a controver-  
28 sy under this Act shall report to the commission,  
29 on forms provided by the commission, any amounts  
30 that he has paid for legal assistance in that  
31 proceeding, including any amount paid for an  
32 employee's legal fees under this subsection.'

33 Further amend the bill by striking out all of  
34 section 44 and inserting in its place the following:

35 'Sec. 44. 39 MRSA §112, as amended by PL 1977,

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1 c. 696, §409, is further amended by adding at the end  
2 a new paragraph to read as follows:

3 This section does not apply to injured employees  
4 governed by section 112-A.'

5 Further amend the bill in section 45, in that  
6 part designated "112-A." by adding at the end the  
7 following:

8 'This section applies only to employees injured  
9 on and after the effective date of this section.'

10 Further amend the bill in section 51 in the first  
11 paragraph, in the 6th line (page 55, line 21 in L.D.)  
12 by inserting after the word "reduce" the word 'the'

13 Further amend the bill in section 51 in the 6th  
14 paragraph in the 6th line (page 55, line 41 in L.D.)  
15 by striking out the word "concerning" and inserting  
16 in its place the word "concerned'

17 Further amend the bill by inserting after section  
18 54 the following:

19 'Sec. 55. Allocation of the Employment Rehabili-  
20 tation Fund. Income to the Employment Rehabilitation  
21 Fund for the next 2 fiscal years, from July 1, 1985  
22 to June 30, 1986, and from July 1, 1986 to June 30,  
23 1987, shall be segregated, apportioned and disbursed  
24 as designated in the following schedule.

	<u>1985-86</u>	<u>1986-87</u>
25		
26	<u>WORKERS' COMPENSATION</u>	
27	<u>COMMISSION</u>	
28	Employment Rehabilita-	
29	tion Program	
30	All Other	\$375,000      \$1,130,000
31	Provides funds for	
32	repayment to employ-	

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1 ees for subsequent  
2 injuries to rehabili-  
3 tated workers, repay-  
4 ment to employers for  
5 expenses of unsuc-  
6 cessful rehabilita-  
7 tion and any legal  
8 fees incurred by the  
9 State under the Maine  
10 Revised Statutes, Ti-  
11 tle 39, section  
12 57-B.'

13 Further amend the bill by inserting before the  
14 emergency clause the following:

15 'PART B

16 Sec. 1. 24-A MRSA c. 25, first 2 lines are re-  
17 pealed and the following enacted in their place:

18 CHAPTER 25

19 RATES AND RATING ORGANIZATIONS

20 SUBCHAPTER I

21 GENERAL PROVISIONS

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

25 3. Workers' compensation shall first be subject  
26 to chapter 25, subchapter II, but any other parts of  
27 this chapter and Title 39 not inconsistent with those  
28 sections shall also apply.

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

31 C. Due consideration shall be given:

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- 1 (1) To past and prospective loss experience  
2 within and outside this State;
- 3 (2) To the conflagration and catastrophe  
4 hazards;
- 5 (3) To a reasonable margin for underwriting  
6 profit and contingencies;
- 7 (4) To dividends, savings or unabsorbed  
8 premium deposits allowed or returned by in-  
9 surers to their policyholders, members or  
10 subscribers;
- 11 (5) To past and prospective expenses both  
12 countrywide and those specially applicable  
13 to this State;
- 14 (6) To all other relevant factors within  
15 and outside this State;
- 16 (6-A) In the case of workers' compensation  
17 rates, consideration shall be given to the  
18 information required to be filed under Title  
19 39, section ~~22~~ 22-D, subsections 2 and 3 4  
20 and 5; and
- 21 (7) In the case of fire insurance rates,  
22 consideration shall be given to the experi-  
23 ence of the fire insurance business during a  
24 period of not less than the most recent  
25 5-year period for which such experience is  
26 available.

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

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

31 SUBCHAPTER II

1           WORKERS' COMPENSATION COMPETITIVE RATING ACT

2           §2331. Title

3           This subchapter shall be known and may be cited  
4           as the "Workers' Compensation Competitive Rating  
5           Act."

6           §2332. Purposes

7           The purposes of this Act are:

8           1. Prohibit price fixing. To prohibit price fix-  
9           ing agreements and other anticompetitive behavior by  
10           insurers;

11           2. Protect policyholders and the public. To pro-  
12           tect policyholders and the public against the adverse  
13           effects of excessive, inadequate or unfairly discrim-  
14           inatory rates.

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

18           4. Provide regulatory procedures. To provide  
19           regulatory procedures for the maintenance of appro-  
20           priate data reporting systems;

21           5. Create improvements. To improve availability,  
22           fairness and reliability of insurance; and

23           6. Authorize cooperative action. To authorize  
24           essential cooperative action among insurers in the  
25           process of gathering and sharing data and to regulate  
26           that activity to prevent practices that tend to sub-  
27           stantially lessen competition or create a monopoly.

28           §2333. Definitions

29           As used in this subchapter, unless the context

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1 indicates otherwise, the following terms have the  
2 following meanings.

3 1. Advisory organization. "Advisory organiza-  
4 tion" means an entity which has 2 or more member in-  
5 surers or is controlled either directly or indirectly  
6 by 2 or more insurers and which assists insurers in  
7 rate-making related activities.

8 A. Two or more insurers having a common owner-  
9 ship or operating in this State under common man-  
10 agement or control, constitute a single insurer  
11 for the purpose of this definition.

12 B. Advisory organization does not include a  
13 joint underwriting association, an actuarial or  
14 legal consultant or an employee of an insurer or  
15 insurers under common control or management or  
16 their employees or manager.

17 2. Classification system or classification.  
18 "Classification system" or "classification" means the  
19 insurance plan, system or arrangement for recognizing  
20 differences in exposure to hazards among industries,  
21 occupations or operations of insurance policyholders.

22 3. Competitive market. "Competitive market"  
23 means a market which has not been found to be noncom-  
24 petitive pursuant to section 2335.

25 4. Expenses. "Expenses" means that portion of a  
26 rate attributable to acquisition, field supervision  
27 and collection expenses, general expenses, taxes, li-  
28 censes and fees.

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



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1           6. Loss ratio. "Loss ratio" means the ratio of  
2 actual incurred losses during the previous 3-year pe-  
3 riod to the actual earned premiums during that peri-  
4 od.

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

9           8. Lost-time claim. "Lost-time claim" means a  
10 claim for which compensation is paid under Title 39,  
11 section 54-A, 55-A, 56, 56-A or 58-A.

12           9. Market. "Market" means the interaction be-  
13 tween buyers and sellers of workers' compensation in-  
14 surance within this State pursuant to this subchap-  
15 ter. A specific market may be identified by geograph-  
16 ic area or schedule or classification system catego-  
17 ry.

18           10. Merit rating. "Merit rating" means a rating  
19 procedure utilizing the past insurance experience of  
20 an individual policyholder with a premium too small  
21 to be eligible for experience rating to adjust the  
22 policyholder's future premiums to reflect anticipated  
23 experience that is better or worse than average.

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

28           12. Pure premium rate. "Pure premium rate" means  
29 that portion of the rate which represents the loss  
30 cost per unit of exposure, including lost adjustment  
31 expense.

32           13. Rate. "Rate" means the cost of insurance per  
33 exposure base unit, prior to any application of indi-  
34 vidual risk variations based on loss or expense con-

1 siderations. Rate does not include minimum premiums.

2 14. Residual market mechanism. "Residual market  
3 mechanism" means an arrangement involving participa-  
4 tion by insurers in the equitable apportionment among  
5 them of insurance which may be afforded applicants  
6 who are unable to obtain insurance through ordinary  
7 methods. It includes the Accident Prevention Account  
8 and the Safety Pool.

9 15. Schedule rating. "Schedule rating" means an  
10 insurance rating procedure where the premium for an  
11 insured may be modified in accordance with rating  
12 rules to reflect characteristics of the risk not re-  
13 flected in its experience.

14 16. Statistical plan. "Statistical plan" means  
15 the plan, system or arrangement used to collect data.

16 17. Superintendent. "Superintendent" means the  
17 Superintendent of Insurance.

18 18. Supplementary rate information. "Supplemen-  
19 tary rate information" means a manual or plan of  
20 rates, classification system, rating schedule, mini-  
21 mum premium, policy fee, rating rule, rating plan and  
22 any other similar information needed to determine the  
23 applicable premium for an insured.

24 19. Supporting information. "Supporting informa-  
25 tion" means the experience and judgment of the filer  
26 and the experience or data of other insurers or orga-  
27 nizations relied on by the filer, the interpretation  
28 of any statistical data relied on by the filer, de-  
29 scriptions of methods used in making the rates and  
30 any other similar information required to be filed by  
31 the superintendent.

32 §2334. Scope of application

33 This subchapter applies to workers' compensation  
34 insurance and employers' liability insurance written

1 in connection therewith.

2 §2335. Competitive market

3 A competitive market is presumed to exist unless  
4 the superintendent, after hearing, determines that a  
5 reasonable degree of competition does not exist in  
6 the market.

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

9 2. Time. The order shall specify its expiration  
10 date. That date shall be a date deemed reasonable by  
11 the superintendent to insure that the market has re-  
12 turned to a reasonable degree of competition.

13 3. Factors. In determining whether a reasonable  
14 degree of competition exists, the superintendent  
15 shall consider relevant tests of workable competition  
16 pertaining to market structure, market performance  
17 and market conduct, including:

18 A. The extent to which any insurer controls a  
19 market;

20 B. Whether the total number of companies writing  
21 insurance is sufficient to provide multiple op-  
22 tions to an employer;

23 C. The disparity among rates and among classifi-  
24 cations and subclassifications to the extent that  
25 they result in rate differentials;

26 D. The availability of insurance and the number  
27 of insurers and self-insurers actively providing  
28 workers' compensation coverage and the level of  
29 and changes in market share of insurers and  
30 self-insurers;

31 E. The degree of participation of employers in  
32 the residual market mechanism;

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

3           G. The relationship between the premiums charged  
4           and the cost of providing coverage, with due con-  
5           sideration of investment income.

6           4. Basis of order. Any single factor under sub-  
7           section 3 may be a sufficient basis for determining  
8           that a reasonable degree of competition does not ex-  
9           ist in a market.

10           5. Report. The superintendent shall issue a re-  
11           port annually, beginning in 1987, on or before Sep-  
12           tember 1, detailing the state of competition in the  
13           market on a statewide basis and identifying specific  
14           markets in which competition may not exist or may be  
15           threatened. The report shall be based on the criteria  
16           of subsection 3, with appropriate weight given to all  
17           factors and shall be supported with specific evi-  
18           dence. The report shall be sent to the Governor, the  
19           President of the Senate and the Speaker of the House  
20           of Representatives.

21           §2336. Rate standards

22           The following standards shall be used in deter-  
23           mining the reasonableness of rates for insurance un-  
24           der this chapter.

25           1. General. Rates shall not be excessive, inade-  
26           quate or unfairly discriminatory.

27           2. Excessiveness. Standards of excessiveness  
28           shall be as follows:

29           A. Rates in a competitive market are presumed  
30           not to be excessive;

31           B. Rates are excessive if:

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

5                   (2) Expenses included in the rate are un-  
6                   reasonably high in relation to services ren-  
7                   dered; or

8                   (3) The rate includes excessive  
9                   subsidization of Safety Pool loss experi-  
10                   ence.

11                   3. Inadequacy. Rates are inadequate if:

12                   A. They are clearly insufficient to sustain pro-  
13                   jected losses and expenses; and

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

15                   (1) Endanger the solvency of the insurer;

16                   (2) Tend to unreasonably limit competition;  
17                   or

18                   (3) Tend to create a monopoly in the mar-  
19                   ket.

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

29                   §2337. Rating criteria

30                   In determining whether rates comply with the  
31                   standards of section 2336, the following criteria

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1 shall apply.

2 1. Basic factors in rates. Due consideration may  
3 be given to past and prospective loss and expense ex-  
4 perience within and outside of this State, to catas-  
5 trophe hazards and contingencies, to events or trends  
6 within and outside of this State, to loadings for  
7 leveling premium rates over time for dividends or  
8 savings to be allowed or returned by insurers to  
9 their policyholders, members or subscribers and to  
10 all other relevant factors, including judgment.

11 2. Expenses. The expense provisions included in  
12 the rates to be used by an insurer shall reflect the  
13 operating methods of the insurer and, so far as it is  
14 credible, its own actual and anticipated expense ex-  
15 perience.

16 3. Profit. The rates may contain provisions for  
17 contingencies and an allowance permitting a reason-  
18 able profit. In determining the reasonableness of  
19 profit, consideration shall be given to all invest-  
20 ment income attributable to premiums and the reserves  
21 associated with those premiums and to a reasonable  
22 return on capital and surplus allocable to the cover-  
23 age of risks in this State.

24 §2338. Filing of rates and other rating information

25 Every insurer shall file with the superintendent  
26 all rates and supplementary rate information which  
27 are to be used in this State, except that information  
28 contained in the uniform plans to which each insurer  
29 must adhere under section 2341.

30 1. Competitive markets. In a competitive market,  
31 rates and supplementary rate information shall be  
32 filed not later than 5 days after their effective  
33 date.

34 A. If the superintendent finds, after notice and  
35 hearing, that an insurer's rates require closer

1 supervision because of the insurer's financial  
2 condition or unfairly discriminatory or excessive  
3 rating practices, he may require prefiling of  
4 rates.

5 B. If prefiling is required, the insurer shall  
6 file with the superintendent at least 30 days be-  
7 fore the effective date all such rates and such  
8 supplementary rate information and supporting in-  
9 formation as prescribed by the superintendent.  
10 Upon application by the filer, the superintendent  
11 may authorize an earlier effective date.

12 2. Noncompetitive market. In a noncompetitive  
13 market, rates and supplementary rate information  
14 shall be filed and shall not take effect until a de-  
15 termination is made by the superintendent. For state-  
16 wide rates in a noncompetitive market:

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

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

24 C. If the State as a market is found to be non-  
25 competitive, the Public Advocate, as appointed  
26 under Title 35, section 1-A, may be a party to  
27 proceedings under Title 39, section 22-D, relat-  
28 ing to rates. A filing requesting that proceed-  
29 ing shall pay a filing fee as provided under sec-  
30 tion 2350, subsection 3, paragraph B.

31 3. Filings open to inspection. All rates, sup-  
32 plementary rate information and any supporting infor-  
33 mation for risks filed under this Act shall, as soon  
34 as filed, be open to public inspection at any reason-  
35 able time. Copies may be obtained by any person on  
36 request and upon payment of a reasonable charge.

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1     §2339. Disapproval of rates

2             1. Timing. A rate may be disapproved within the  
3             following time limits.

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

6             B. A rate subject to prefiling under section  
7             2338 may also be disapproved before the effective  
8             date.

9             C. A rate for a noncompetitive or a residual  
10            market shall not become effective until estab-  
11            lished by the superintendent pursuant to Title  
12            39, section 22-D.

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

15            A. The superintendent shall disapprove a rate if  
16            the insurer fails to comply with the filing re-  
17            quirements under section 2338.

18            B. The superintendent shall disapprove a rate  
19            for use in a competitive market if he finds that  
20            the rate violates the standards of section 2336  
21            or any other applicable requirement of this Act.

22            3. Disapproval procedure; order; interim  
23            rates. The superintendent may disapprove rates in  
24            accordance with the following procedures.

25            A. The procedure for disapproval shall be as  
26            follows.

27                    (1) If the superintendent finds under sec-  
28                    tion 2335 that a reasonable degree of compe-  
29                    tition does not exist or believes that rates  
30                    violate the standards of section 2336 or any  
31                    other applicable requirement of this Act, he



1                   may require the insurers to file supporting  
2                   information in support of existing rates  
3                   within 30 days or within a reasonable time  
4                   extension for good cause shown as the super-  
5                   intendent may fix. If, after reviewing the  
6                   supporting rate information, the superin-  
7                   tendent believes that such rates may violate  
8                   any of the requirements of this Act, he  
9                   shall call a hearing prior to any disapprov-  
10                   al.

11                   (2) The superintendent may disapprove,  
12                   without hearing, rates prefiled pursuant to  
13                   section 2338, subsection 1, that have not  
14                   become effective. The insurer whose rates  
15                   have been disapproved shall be given a hear-  
16                   ing upon a written request made within 30  
17                   days after the disapproval order.

18                   B. If the superintendent disapproves a rate, he  
19                   shall issue an order specifying in what respects  
20                   it fails to meet the requirements of this sub-  
21                   chapter and stating when that rate shall be dis-  
22                   continued for any policy issued or renewed after  
23                   a date specified in the order. The order shall  
24                   be issued within 30 days after the close of the  
25                   hearing or within a reasonable time extension for  
26                   good cause shown as the superintendent may fix.  
27                   The order may include a provision for premium ad-  
28                   justment for the period after the effective date  
29                   of the order for policies in effect on that date.

30                   C. Whenever an insurer has no legally effective  
31                   rates, the superintendent shall specify interim  
32                   rates for the insurer that correspond to the  
33                   rates in effect at that time for the Safety Pool.  
34                   He may order that a specified portion of the pre-  
35                   miums be placed in an escrow account approved by  
36                   him. When new rates become legally effective,  
37                   the superintendent shall order the escrowed funds  
38                   or any overcharge in the interim rates to be dis-  
39                   tributed appropriately, except that refunds of

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1 less than \$10 per policyholder shall not be re-  
2 quired.

3 §2340. Monitoring competition and compliance

4 1. Monitoring competition. The superintendent  
5 shall monitor the degree of competition in this  
6 State. In doing so, he shall utilize existing  
7 relevant information, analytical systems and other  
8 sources, cause or participate in the development of  
9 new relevant information, analytical systems and oth-  
10 er sources or rely on some combination thereof.  
11 These activities may be conducted internally within  
12 the insurance bureau, in cooperation with other state  
13 insurance departments, through outside contractors  
14 and in any other appropriate manner.

15 2. Monitoring rate compliance. The superintend-  
16 ent shall make or cause to be made investigations as  
17 he may deem necessary to satisfy himself that rates  
18 comply with the requirements of this Act.

19 §2341. Uniform administration of classifications;  
20 reporting of rates and other information

21 1. Uniform classification system. Every work-  
22 ers' compensation insurer, including self-insurers,  
23 shall adhere to a uniform classification system and  
24 uniform experience rating plan filed with the super-  
25 intendent by an advisory organization designated by  
26 the superintendent and subject to his disapproval.  
27 An insurer may develop subclassifications of the uni-  
28 form classification system on which a rate may be  
29 made, provided that:

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

32 B. The superintendent may disapprove a  
33 subclassification if:

1                   (1) The insurer fails to demonstrate that  
2                   the data produced may be reported consistent  
3                   with the uniform statistical plan and clas-  
4                   sification system; or

5                   (2) The proposed subclassification:

6                   (a) Is not reasonably related to the  
7                   exposure;

8                   (b) Is not adequately defined;

9                   (c) Has not been shown to distinguish  
10                   among insured based on the potential  
11                   for or hazard of loss; or

12                   (d) Is likely to be unfairly discrimi-  
13                   natory.

14                   2. Statistical advisory organization. The super-  
15                   intendent shall designate an advisory organization to  
16                   assist him in gathering, compiling and reporting rel-  
17                   evant statistical information. Every workers' compen-  
18                   sation insurer shall record and report its workers'  
19                   compensation experience to the designated advisory  
20                   organization as set forth in the uniform statistical  
21                   plan.

22                   3. Manual rules. The designated advisory organi-  
23                   zation shall develop and file manual rules, subject  
24                   to the approval of the superintendent, reasonably re-  
25                   lated to the recording and reporting of data pursuant  
26                   to the uniform statistical plan, uniform experience  
27                   rating plan and the uniform classification system.

28                   A. Every workers' compensation insurer shall ad-  
29                   here to the approved manual rules and experience  
30                   rating plan in writing and reporting its busi-  
31                   ness.

32                   B. No insurer may agree with any other insurer  
33                   or with an advisory organization to adhere to

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1           manual rules which are not reasonably related to  
2           the recording and reporting of data pursuant to  
3           the uniform classification system or the uniform  
4           statistical plan.

5           §2342. Payment of dividends

6           The following provisions apply to the payment of  
7           dividends, savings or unabsorbed premium deposits al-  
8           lowed or returned by insurers to their policyholders,  
9           members or subscribers.

10           1. Discrimination. The payment shall not unfair-  
11           ly discriminate between policyholders.

12           2. Rating plan. A plan for payment of dividends,  
13           savings or unabsorbed premium deposits is not consid-  
14           ered a rating plan or system.

15           §2343. Uniform experience and merit rating plans

16           An experience or merit rating plan shall contain  
17           reasonable eligibility standards and provide adequate  
18           incentives for loss prevention and for sufficient  
19           premium differentials to encourage safety.

20           1. Experience rating plan. The uniform experi-  
21           ence rating plan shall be the exclusive means for  
22           providing prospective premium adjustment based upon  
23           the past claim experience of an individual insured.

24           2. Retrospective premium adjustments. Insurers  
25           may rate rating plans that provide for retrospective  
26           premium adjustments based on an insured's past expe-  
27           rience.

28           3. Merit rating plan. If an insured is not eli-  
29           gible for an experience rating plan, a merit rating  
30           plan shall be applied.

31           A. A plan shall provide for the following mini-  
32           mum credits or maximum debits to be applied to

1        the otherwise applicable manual premium, based on  
2        the number of lost-time claims of the insured  
3        during the most recent 3-year period for which  
4        statistics are available:

5                (1) No claims or a loss ratio of less than  
6                1.0, an 8% credit;

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

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

11        B. The insurer shall notify the insured of the  
12        premium adjustment, credit or debit and the rea-  
13        son for it.

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

16        §2344. Schedule rating

17               An insurer may file a schedule rating plan which  
18               permits modification to the otherwise applicable pre-  
19               mium after the application of experience rating but  
20               before any premium discounts and loss constants. A  
21               plan shall not apply to the residual market.

22               1. Disapproval. The superintendent may disap-  
23               prove any schedule rating plan, pursuant to section  
24               2339, if the plan is unfairly discriminatory, if the  
25               filer has failed to demonstrate that experience can  
26               be accurately reported, or the plan otherwise fails  
27               to comply with the requirements of this section.

28               2. Standards. The following provisions shall ap-  
29               ply to a plan.

30               A. A modification may not be applied unless sup-  
31               ported by evidence contained in the file of the  
32               insurer at the time the modification is applied.

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- 1           B. The effective date of a modification shall  
2           not precede the receipt by the insurer of the ev-  
3           idence supporting the modification.
- 4           C. An explanation of the modification shall be  
5           provided to the insured.
- 6           D. The insurer shall provide an opportunity for  
7           the insured to correct any information by evi-  
8           idence provided to the insurer.
- 9           E. The plan may include the following factors:
- 10                   (1) Condition of the premises;
- 11                   (2) Classification peculiarities;
- 12                   (3) Availability of medical facilities or  
13                   services;
- 14                   (4) Presence and use of safety devices;
- 15                   (5) Methods of employee selection, training  
16                   and supervision;
- 17                   (6) Cooperation between management and the  
18                   insurer on safety and prevention programs;
- 19                   (7) Compliance with federal, state and lo-  
20                   cal safety and health regulations;
- 21                   (8) Participation in an organized safety  
22                   training and education program;
- 23                   (9) Participation in retraining or rehabil-  
24                   itation programs for injured employees; and
- 25                   (10) Management organization that encour-  
26                   ages safety.
- 27           F. Eligibility may not be based on a minimum

1           premium.

2           3. Applicability; limitations. No insurer may  
3 file a schedule rating plan prior to January 1, 1987.  
4 In the time period extending from January 1, 1987, to  
5 December 31, 1988, no scheduled rating credit may ex-  
6 ceed 25% and no debits may be applied. On or after  
7 January 1, 1989, no scheduled rating credit or debit  
8 may exceed 25%.

9           §2345. Complaints on rates or filings

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

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

19           2. Appeal. Any party aggrieved by the action of  
20 the insurer or advisory organization on that request  
21 may, within 30 days after written notice of that ac-  
22 tion, appeal to the superintendent. After a hearing  
23 held on not less than 10 days written notice to the  
24 appellant and to the insurer or advisory organiza-  
25 tion, the superintendent may affirm, modify or re-  
26 verse that action.

27           §2346. Licensing advisory organizations

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

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

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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 sue a license specifying the authorized activity of  
24 the applicant. He shall not issue a license if the  
25 proposed activity tends to create a monopoly or to  
26 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 §2347. Insurers and advisory organizations; prohib-



1           ited activity

2           1. Restraint of trade. No insurer or advisory  
3 organization may make any arrangement with any other  
4 insurer, advisory organization or other person which  
5 has the purpose or effect of unreasonably restraining  
6 trade or substantially lessening competition in the  
7 business of insurance.

8           2. Rate agreements. No insurer may agree with  
9 any other insurer or with an advisory organization to  
10 adhere to or use a rate or rating plan, other than a  
11 uniform experience or classification rating plan or  
12 rating rule, except as needed to comply with the re-  
13 quirements of section 2341.

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

21           4. Common ownership. Two or more insurers having  
22 a common ownership or operating in this State under  
23 common management or control may act as if they con-  
24 stituted a single insurer.

25           5. Advisory organizations. Except as specifical-  
26 ly permitted under section 2348, no advisory organi-  
27 zation may:

28           A. Compile or distribute recommendations relat-  
29 ing to rates that include:

30           (1) Expenses, other than loss adjustment  
31 expenses;

32           (2) Profit; or

33           (3) Actuarial projections or trending fac-

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1                   tors;

2                   B. File rates, supplementary rate information or  
3                   supporting information on behalf of an insurer;  
4                   or

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

7                   §2348. Advisory organizations; permitted activity

8                   Any advisory organization, in addition to other  
9                   activities not prohibited, may:

10                   1. Develop statistical plans. Develop statisti-  
11                   cal plans, including class definitions;

12                   2. Collect data. Collect statistical data from  
13                   members, subscribers or any other source;

14                   3. Prepare pure premiums. Prepare and distribute  
15                   pure premium rate data in accordance with its statis-  
16                   tical plans. The data shall be in sufficient detail  
17                   to permit insurers to modify the pure premiums based  
18                   on their own rating methods or interpretations of un-  
19                   derlying data. Appropriate actuarial projection and  
20                   trending factor data may be prepared and submitted to  
21                   the superintendent to the extent necessary to estab-  
22                   lish proper residual market rates;

23                   4. Prepare rating rules. Prepare and distribute  
24                   manuals of rating rules and rating schedules that do  
25                   not contain any rules or schedules containing final  
26                   rates or permitting calculation of final rates with-  
27                   out information outside the manuals;

28                   5. Distribute information. Distribute informa-  
29                   tion that is filed with the superintendent and open  
30                   to public inspection;

31                   6. Conduct research. Conduct research and col-  
32                   lect statistics in order to discover, identify and

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1 classify information relating to causes or  
2 preventions of losses;

3 7. File policy forms. Prepare and file policy  
4 forms and endorsements and consult with members, sub-  
5 scribers and others relative to their use and appli-  
6 cation;

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

11 9. Evaluate benefit changes. Conduct research  
12 and collect information to determine the impact of  
13 benefit level changes on pure premium rates; and

14 10. Calculate experience rating modifications.  
15 Prepare and distribute rules and rating values for  
16 the uniform experience rating plan; calculate and  
17 disseminate individual values for the uniform experi-  
18 ence rating plan; and calculate and disseminate indi-  
19 vidual risk premium modifications.

20 §2349. Advisory organizations; filing requirements

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

27 §2350. Residual market mechanism

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

30 1. Accident Prevention Account. The Accident  
31 Prevention Account shall be an insurance plan that  
32 provides for the equitable apportionment among insur-  
33 ers of insurance which may be afforded applicants who

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1 are in good faith entitled to but unable to procure  
2 that insurance through ordinary methods because of  
3 their demonstrated accident frequency problem,  
4 measurably adverse loss ratio over a period of years,  
5 or demonstrated attitude of noncompliance with safety  
6 requirements.

7 A. All insurers authorized to write workers'  
8 compensation and employers' liability insurance  
9 in this State shall participate in the plan.

10 B. The plan shall include an experience rating  
11 system and merit rating plan whereby the premium  
12 of each employer in the account is modified ei-  
13 ther prospectively or retrospectively. An experi-  
14 ence modification shall only be applied to the  
15 manual rate of the plan. The plan shall also pro-  
16 vide for premium surcharges for employers based  
17 on their specific loss experience within a speci-  
18 fied period or other factors which are reasonably  
19 related to their risk of loss. The sensitivity of  
20 a rating system may vary by size of the risk in-  
21 volved.

22 C. The plan shall produce the least possible  
23 subsidization of the account's loss experience  
24 consistent with this chapter and sound actuarial  
25 principles. Subsidization shall be borne equally  
26 by the voluntary market and the Safety Pool based  
27 on premium amounts.

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

31 E. An employer is eligible for insurance from  
32 the Accident Prevention Account if:

33 (1) He has a loss ratio greater than 1.00  
34 over the last 3 years for which data is  
35 available; and

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

5                   F. A designated advisory organization shall sub-  
6                   mit a plan for the superintendent's approval  
7                   within 30 days of the effective date of this sec-  
8                   tion. A plan or amendment shall not take effect  
9                   until approved by the superintendent.

10                   (1) The following applies to premium  
11                   surcharges.

12                   (a) No premium surcharges may be ap-  
13                   plied until on or after January 1,  
14                   1987.

15                   (b) Premium surcharges apply to a pre-  
16                   mium that is experience or merit rating  
17                   modified.

18                   (c) Premium surcharges may not exceed  
19                   10% prior to January 1, 1989.

20                   (d) Premium surcharges shall be based  
21                   on an insured's adverse deviation from  
22                   expected incurred losses in this State.  
23                   The surcharge shall be based on the ra-  
24                   tio of "A" to "B" where:

25                   (i) "A" is the actual incurred  
26                   losses of a risk during the previ-  
27                   ous 3-year experience period as  
28                   reported; and

29                   (ii) "B" is the expected incurred  
30                   losses of a risk during that peri-  
31                   od as calculated under the uniform  
32                   experience or merit rating plan  
33                   times the risk's current experi-  
34                   ence or merit rating modification

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1 factor.

2 (e) The premium surcharge shall be as  
3 follows:

4	Ratio of "A" to "B"	Surcharge
5	Less than 1.20	None
6	1.20 or greater, but 7 less than 1.30	5%
8	1.30 or greater, but 9 less than 1.40	10%
10	1.40 or greater, but 11 less than 1.50	15%
12	1.50 or greater	20%

13 G. The Accident Prevention Account shall be sub-  
14 ject to Title 39, section 22-D, and shall be con-  
15 sidered to be an insurer under this subchapter.

16 2. Safety Pool. The Safety Pool is an insurance  
17 plan that provides for an alternative source of in-  
18 surance for employers with good safety records.

19 A. The Safety Pool is created. It is intended to  
20 operate within the framework of the voluntary in-  
21 surance market.

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

26 (2) The Safety Pool shall be exempt from  
27 any budgetary control or supervision by  
28 state agencies, except to the extent an in-  
29 surance company is so supervised or con-  
30 trolled.

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1           B. An employer shall be eligible for the Safety  
2           Pool if he:

3                   (1) Has had no more than one lost-time  
4                   claim in the last 3 years for which data is  
5                   available, regardless of the resulting loss  
6                   ratio;

7                   (2) Has a loss ratio which does not exceed  
8                   1.0 over the last 3 years for which data is  
9                   available; or

10                   (3) Has been in business for less than 3  
11                   years, provided that his eligibility shall  
12                   terminate if his loss ratio exceeds 1.0 at  
13                   the end of any year.

14           C. A member of the Safety Pool who becomes inel-  
15           igible under paragraph B shall be ordered to  
16           leave the Safety Pool after notice under Title  
17           39, section 23, subsection 1.

18           D. The Safety Pool shall be subject to Title 39,  
19           section 22-D, and shall be considered to be an  
20           insurer under this chapter.

21                   (1) There should be no subsidization of the  
22                   Safety Pool's loss experience by employers  
23                   not in the Safety Pool.

24                   (2) The superintendent shall annually re-  
25                   view the rates in the Safety Pool to deter-  
26                   mine if subsidization exists.

27           E. Every insurance company which is a partici-  
28           pant in the Accident Prevention Account shall al-  
29           so be a participant in the Safety Pool.

30           F. The superintendent, after notice and hearing,  
31           shall adopt and may amend a plan for the opera-  
32           tion of the Safety Pool.

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1                   (1) An advisory organization designated by  
2                   the superintendent shall submit a plan, in-  
3                   cluding rates, supplementary rate informa-  
4                   tion and policy forms, for the  
5                   superintendent's approval within 30 days of  
6                   the effective date of this section.

7                   (2) The superintendent may require addi-  
8                   tional information he deems necessary to  
9                   properly evaluate the plan.

10                   (3) Commissions under a plan shall be es-  
11                   tablished at a level that is neither an in-  
12                   centive nor a disincentive to place an em-  
13                   ployer in the Safety Pool.

14                   (4) A plan, or any amendment to it, shall  
15                   not take effect until approved by the super-  
16                   intendent.

17                   G. The superintendent shall annually issue a re-  
18                   port, beginning in 1987, on or before September  
19                   1st, to the Governor, the President of the Senate  
20                   and the Speaker of the House of Representatives.  
21                   The report shall include at least the following  
22                   information relating to the Safety Pool:

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

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

27                   (3) The number of employers in the Safety  
28                   Pool and the number who have entered or  
29                   left;

30                   (4) The total earned premium, paid losses,  
31                   reserves and incurred losses; and

32                   (5) The investment income of the Safety



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1                   Pool and its method of allocation or deter-  
2                   mination.

3                   3. Rate filings. Rate filings for rates in the  
4                   Accident Prevention Account and the Safety Pool shall  
5                   be made at the same time or not sooner than 180 days  
6                   apart. If filed together, they shall be considered  
7                   together.

8                   A. A rate filing for the Safety Pool shall in-  
9                   clude experience and merit rating plans. The ex-  
10                   perience rating plan shall be the uniform experi-  
11                   ence rating plan. The merit plan shall provide  
12                   the maximum credits possible to Safety Pool mem-  
13                   bers on the basis of individual loss experience,  
14                   including frequency and severity, consistent with  
15                   this chapter and sound actuarial principles.

16                   B. The Public Advocate, as appointed under Title  
17                   35, section 1-A, shall be a party to proceedings  
18                   under Title 39, section 22-D, relating to rates  
19                   for the Accident Prevention Account or Safety  
20                   Pool.

21                   C. A filer requesting a proceeding under Title  
22                   39, section 22-D, relating to rates for the Acci-  
23                   dent Prevention Account or Safety Pool, shall pay  
24                   to the superintendent at the time of the filing a  
25                   filing fee, which shall be immediately credited  
26                   to the Public Advocate. The fee shall be segre-  
27                   gated and expended for the purpose of employing  
28                   outside consultants to fulfill the requirements  
29                   of paragraph B and any portion not so expended  
30                   shall be returned to the filer. For a filing  
31                   filed in 1985, 1986 or 1987, the fee shall be  
32                   \$75,000; in 1988, \$65,000; and in 1989 or there-  
33                   after, \$50,000. If filings in the Accident Pre-  
34                   vention Account and the Safety Pool are made to-  
35                   gether, only one fee shall be paid, which shall  
36                   be evenly divided between the 2 filers.

37                   D. The designated advisory organization may make

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1           and file the plan of operation, rates, rating  
2           plans, rules and policy forms for the Accident  
3           Prevention Account or Safety Pool, or both.

4           4. Review. The superintendent shall review the  
5           rates, including rates for individual classifications  
6           and subclassifications, in the Accident Prevention  
7           Account and the Safety Pool at least once every 2  
8           years and may review rates more frequently if he be-  
9           lieves it necessary.

10          5. Rates. The insurance rates for the Accident  
11          Prevention Account and the Safety Pool shall be gov-  
12          erned by section 2355.

13          §2351. Safety groups

14          A safety group shall be an insured plan that pro-  
15          vides for an alternative source of insurance for mem-  
16          bers of an organization or association. An insurer  
17          may issue a workers' compensation and employers' lia-  
18          bility policy or policies insuring a safety group if  
19          the requirements of this section are met.

20          1. Filings. The organization or association  
21          shall file with the superintendent:

22          A. A copy of its articles of incorporation and  
23          bylaws or its agreement of association and rules  
24          governing the conduct of its business, all certi-  
25          fied by the custodian of the originals;

26          B. An agreement that only members of the organi-  
27          zation or association shall be eligible for in-  
28          surance as a member of the group and that it will  
29          notify its insurer within 10 days if any member  
30          fails to remain a member in good standing in ac-  
31          cordance with the standards and rules of the or-  
32          ganization or association;

33          C. A description of the operation and makeup of  
34          a safety committee which, by means of education

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1 and otherwise, will seek to reduce the incidence  
2 and severity of accidents or claims; and

3 D. If a group policy, an agreement in writing  
4 duly executed guaranteeing that, if the insurer  
5 notifies the safety group of the nonpayment of a  
6 premium by an insured member within 60 days after  
7 the premium was due, the safety group will pay to  
8 the insurer the amount of any past due premium  
9 which does not exceed the amount of the dividends  
10 that are due the safety group or its members from  
11 the insurer. The safety group shall promptly no-  
12 tify the insurer of the known insolvency of any  
13 member of the group and shall request, upon  
14 learning of the insolvency, the removal of the  
15 member from the group. A copy of the resolution  
16 of the governing board of the group authorizing  
17 the execution of the guarantee agreement shall be  
18 filed with the superintendent and with the insurer  
19 issuing the group policy.

20 2. Advance premium discounts. Any advance premi-  
21 um discount for any new or existing safety group  
22 shall be filed with the superintendent not later than  
23 5 days after the effective date.

24 3. Management. The safety group shall designate  
25 a person to act as the manager or authorized repre-  
26 sentative of the group. The manager or the group may  
27 be remunerated by the members for expenses, including  
28 all ordinary operating expenses of the group, but in  
29 no instance shall the amount charged to members ex-  
30 ceed 10% of earned premiums.

31 4. Dividends. Dividends or returned premiums  
32 paid or credited to a safety group shall be paid or  
33 credited to the individual members of the group, ex-  
34 cept that the indebtedness for any unpaid premium  
35 shall be first deducted from any dividend or premium  
36 returned.

37 5. Other requirements. Any safety group formed

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1 or operating under this section shall be subject to  
2 the requirements of sections 2931 to 2940, except  
3 that the safety group or the insurer may establish  
4 reasonable underwriting standards regarding eligibil-  
5 ity for acceptance and continued membership of the  
6 safety group. These underwriting standards shall be  
7 filed with the superintendent and may be disapproved  
8 by the superintendent if they unreasonably limit mem-  
9 bership in the safety group.

10 §2352. Examinations

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

14 2. Records. Every insurer and advisory organi-  
15 zation shall maintain reasonable records of the type  
16 and kind reasonably adapted to its method of opera-  
17 tion, containing its experience or the experiences of  
18 its members, including the data, statistics or infor-  
19 mation collected or used by it in its activities.

20 A. These records shall be available at all rea-  
21 sonable times.

22 B. These records shall be maintained in an of-  
23 fice within this State or shall be made available  
24 to the superintendent at his office on reasonable  
25 notice.

26 3. Cost. The reasonable costs of an examination  
27 shall be paid by the examined party on presentation  
28 of a detailed account of these costs.

29 4. Report. In lieu of an examination, the su-  
30 perintendent may accept the report of an examination  
31 by the insurance supervisory official of another  
32 state, made pursuant to the laws of that state.

33 §2353. Penalties

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1           1. Civil penalties. A person or organization in  
2 violation of a provision of this chapter shall be as-  
3 essed a civil penalty of not more than \$1,000 for  
4 each violation, except that where a violation is  
5 willful, a civil penalty of not more than \$10,000  
6 shall be assessed for each violation. These penal-  
7 ties may be in addition to any other penalty provided  
8 by law.

9           2. Separate violation. For purposes of this  
10 section, an insurer using a rate for which that in-  
11 surer has failed to file the rate, supplementary rate  
12 information or supporting information as required by  
13 this subchapter, shall have committed a separate vio-  
14 lation for each day that failure continues.

15           3. License. The license of an advisory organi-  
16 zation or insurer which fails to comply with an order  
17 of the superintendent may be suspended or revoked by  
18 the Administrative Court.

19           §2354. Judicial review

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

23           §2355. Rate change limitations

24           The following provisions shall apply to all work-  
25 ers' compensation insurance rates under this subchap-  
26 ter and Title 39, sections 22-C and 22-D.

27           1. Purpose. The provisions of this section re-  
28 fect the rate effect of amendments to Title 39 im-  
29 plemented by Public Law 1983, chapter 479 and by this  
30 Act and the consideration of investment income at-  
31 tributable to insurance premiums and reserves which  
32 income has not previously been considered in estab-  
33 lishing present rates.

34           2. Rate reduction. A rate filing shall not be

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1 effective after the effective date of this section  
2 unless the overall manual rate level is reduced at  
3 least 8% from the overall manual rate level in ef-  
4 fect on January 1, 1985. If no rate filing is effec-  
5 tive after the effective date of this section, the  
6 superintendent shall immediately promulgate rates, to  
7 be effective on August 1, 1985, whose overall manual  
8 rate level is reduced at least 8% from the overall  
9 manual rate level effective on January 1, 1985. The  
10 superintendent's determination without a filing shall  
11 require notice and hearing as provided under Title 5,  
12 chapter 375, subchapter IV; and the notice and hear-  
13 ing provisions of this Title and Title 39, sections  
14 22-C and 22-D shall not apply.

15 A. "Overall manual rate level" means the pro-  
16 jected total amount of money to be generated by  
17 the application of manual rates per \$100 of pay-  
18 roll on file with the superintendent, exclusive  
19 of any rating system adjustments, including mini-  
20 mum premiums, loss constants, experience or ret-  
21 rospective rating plans or dividend plans.

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

24 3. Rates during 1985 and 1986. From July 1,  
25 1985, to December 31, 1986, each insurer's rates  
26 shall not exceed the workers' compensation rates in  
27 effect on June 30, 1985, except that this rate shall  
28 be adjusted under subsection 2.

29 4. Rates during 1987. From January 1, 1987, to  
30 December 31, 1987, each insurer's rates shall not ex-  
31 ceed the workers' compensation rates in effect on De-  
32 cember 31, 1986, increased by no more than 10%.

33 5. Rates during 1988. From January 1, 1988, to  
34 December 31, 1988, each insurer's rates shall not ex-  
35 ceed the workers' compensation rates allowed under  
36 subsection 4, increased by no more than 10%.

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1           6. Application. The rate limitations in this  
2 section shall apply to all workers' compensation in-  
3 surance written in this State and to rates in the  
4 competitive and residual markets. For policies in  
5 effect on the effective date of this section, the  
6 premiums due or paid shall be reduced on a pro rata  
7 basis for the remainder of the term of that policy  
8 after August 1, 1985, to reflect the reduction under  
9 subsection 2.

10           7. Report. The superintendent shall issue a re-  
11 port on or before May 1, 1987, detailing the realized  
12 savings or reduced expenses which have resulted from  
13 the amendments to Title 39 implemented by Public Law  
14 1983, chapter 479 and this Act, including a specific  
15 allocation of those savings or reduced expenses to  
16 the specific changes in law. The report shall be  
17 based on reported data from insurers for calendar  
18 years 1984, 1985 and 1986 and information derived  
19 from one or more public hearings. Its conclusions  
20 shall be supported with specific evidence. It shall  
21 also include recommendations to implement any adjust-  
22 ments to the estimated savings reflected in the re-  
23 duction of subsection 2 for actual experience. The  
24 report shall be sent to the Governor, the President  
25 of the Senate and the Speaker of the House.

26           §2356. Costs

27           In any proceeding under section 2335 or 2338, the  
28 superintendent may employ staff personnel and outside  
29 consultants. The reasonable costs related to the  
30 conduct of the proceeding, including conduct of any  
31 hearings, shall be borne by the insurer involved in  
32 the proceeding.

33           §2357. Nonseverability

34           In the event that any portion of this subchapter,  
35 except section 2355, is held invalid, it is the in-  
36 tent of the Legislature that this entire subchapter,  
37 except section 2355 and this section, is invalidated

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1 and the provisions of Title 39, section 22-C, subsec-  
2 tion 13 and section 22-D are also invalidated. In  
3 the event that section 2355 is held invalid, it is  
4 the intent of the Legislature that this entire sub-  
5 chapter and the provisions of Title 39, section 22-C,  
6 subsection 13; sections 22-D, 53-A, 54-A, 55-A, 58-A  
7 and 62-B; section 94, subsection 13; section 110,  
8 subsection 2; and section 112-A are also invalidated,  
9 provided that the effective date of the invalidation  
10 of sections 53-A, 54-A, 55-A, 58-A, and 62-B; section  
11 94, subsection 13; section 110, subsection 2; and  
12 section 112-A shall be 60 days after the date of a  
13 court decision effectively invalidating section 2355  
14 if the Legislature is in regular session on the date  
15 of that court decision, or, if the Legislature is  
16 not in regular session on that date, 60 days after  
17 the date of the convening of the next regular ses-  
18 sion.

19 Sec. 6. 39 MRSA §22-B, as amended by PL 1983, c.  
20 659, §§1 and 2, is repealed.

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

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

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

28 §22-D. Approval of insurance policies and rates

29 The following provisions apply to determination  
30 of insurance policies and rates by the Superintendent  
31 of Insurance as provided in Title 24-A, chapter 25,  
32 subchapter II.

33 1. Policies. Every insurance company issuing  
34 workers' compensation insurance policies covering the  
35 payment of compensation and benefits provided for in



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1 this Act shall file with the Superintendent of Insur-  
2 ance:

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

6 B. Its classification of risks and their premium  
7 rates and any subsequent proposed classifications  
8 and premium rates; and

9 C. Any premium rates less than those approved  
10 which may be used.

11 Premium rates for insurance issued in the residual  
12 market shall not take effect until established by the  
13 superintendent. All other premium rates shall take  
14 effect as provided in Title 24-A, chapter 25, sub-  
15 chapter II.

16 2. Determination of rates. The superintendent  
17 shall apply the procedures and standards of this sec-  
18 tion in investigating, reviewing and determining just  
19 and reasonable rates.

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

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

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

32 3. Notice of filing. At least 45 days prior to  
33 any filing for rates under this section, a filer

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1 shall notify the superintendent in writing of its intention to file and shall disclose the approximate  
2 amount of a requested increase or decrease and a description of major rating rule changes to be proposed.  
3 Within 10 days of receipt, the superintendent shall notify the public by publication in the state  
4 paper and notify the Public Advocate that a rate filing is to be made.  
5  
6  
7  
8

9 4. Contents of filing. A rate filing shall include, for each company included in the filing:  
10

11 A. For each of the 3 calendar years immediately  
12 preceding the date of the filing:

13 (1) The actual gross earned premium allocable to the coverage of risks in this State;  
14

15 (2) For unearned premium, earned premium, loss and loss expense reserve funds and capital and surplus subject to investment, allocable to the coverage of risks in this  
16 State;  
17  
18  
19

20 (a) The amount of investments of each  
21 type of funds;

22 (b) The types of investments of all  
23 these funds; and

24 (c) The annual income amounts, before  
25 taxes, generated by the aggregate of  
26 these investments;

27 (3) The gross rate of return on admitted  
28 assets;

29 (4) The amount of dividends or the equivalent allowed or returned to policyholders,  
30 members or subscribers;  
31

32 (5) The aggregate annual expenses allocable

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1                   to the coverage of risks in this State, in-  
2                   cluding acquisition and field supervision  
3                   expenses, taxes, licenses and fees, other  
4                   than federal income tax and general ex-  
5                   penditures, each stated separately. Safety en-  
6                   gineering expense and loss control services'  
7                   expense shall be stated separately under  
8                   general expense;

9                   (6) The aggregate annual losses and loss  
10                   adjustment expenses allocable to the cover-  
11                   age of risks in this State;

12                   (7) The total loss reserves for this cover-  
13                   age being held at the beginning and end of  
14                   each calendar year and the annual paid  
15                   losses, including methods and interest rates  
16                   used in determining present value for the  
17                   reserves to which they apply; and

18                   (8) The changes and improvements instituted  
19                   in loss control and employee safety engi-  
20                   neering;

21                   B. For each risk classification:

22                   (1) The rate presently applicable to the  
23                   classification;

24                   (2) The rate proposed for the classifica-  
25                   tion;

26                   (3) Loss experience in this State for each  
27                   of the 3 most recent years available, in-  
28                   cluding, in each classification, payroll,  
29                   number of serious workers' compensation  
30                   cases, number of nonserious cases, the  
31                   losses, including medical expenses incurred  
32                   with respect to each type of case, loss ad-  
33                   justment expense and the total of all losses  
34                   and expenses incurred; and

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

3                   C. If data reported is determined by percentage  
4                   factors, rather than actual expense, an explana-  
5                   tion of the basis of the factors used;

6                   D. Statements or exhibits that reasonably sub-  
7                   stantiate assumptions, methodology or calcula-  
8                   tions used in support of the proposed rates or to  
9                   generate the information or data in the filing  
10                   and identification of any of those that are known  
11                   or believed to be contrary to established policy  
12                   of the superintendent; and

13                   E. Any other information required to be included  
14                   by the superintendent.

15                   5. Aggregate data. Aggregate expense data, an-  
16                   ual losses, loss adjustment expense data and loss  
17                   experience data required to be reported under subsec-  
18                   tion 4, paragraph A, subparagraphs (5) and (6); and  
19                   paragraph B, subparagraph (3), shall be based on ex-  
20                   pende and experience data pertaining to this State,  
21                   except as otherwise provided in this subsection. The  
22                   rate of return on capital and surplus used in estab-  
23                   lishing the rates requested, the rate of return on  
24                   the investment allocable to the coverage of risks in  
25                   this State and the facts, assumptions and calcula-  
26                   tions employed to derive each rate of return shall  
27                   also be reported in the aggregate.

28                   A. To the extent that the Maine expense and ex-  
29                   perience data is not fully creditable, the super-  
30                   intendent may allow reporting of and consider da-  
31                   ta from outside this State.

32                   B. Aggregate loss experience data shall:

33                   (1) Include and be categorized as required  
34                   in subsection 4, paragraph B, subparagraph  
35                   (3); and

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1                   (2) Be presented in tabular form. The ta-  
2                   bles shall indicate, with respect to each  
3                   classification, the relative weight given to  
4                   experience in this State and to national ex-  
5                   perience in determining the applicable rate.

6                   6. Additional information. The superintendent  
7                   may require, at any time, any additional information  
8                   he deems necessary and may reasonably extend the time  
9                   periods established in subsection 9 to allow time to  
10                   provide that information.

11                   A. Within 30 days of receipt of a filing, the  
12                   superintendent shall determine if the filing is  
13                   complete.

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

17                   (2) An applicant shall complete or amend  
18                   the filing within 30 days of that written  
19                   notice.

20                   (3) An action or inaction by the superin-  
21                   tendent under this paragraph does not con-  
22                   stitute a substantive finding that the in-  
23                   formation in the filing is sufficient to es-  
24                   tablish that any action or relief should be  
25                   granted or that any facts have been proven  
26                   or limit the superintendent's authority to  
27                   request further information or data.

28                   B. If the applicant fails to furnish the infor-  
29                   mation within the time prescribed, the superin-  
30                   tendent may issue an order dismissing the filing.

31                   C. For all purposes, the date of completing the  
32                   filing shall be deemed the date on which the last  
33                   document that made the filing complete was re-  
34                   ceived by the superintendent, except that the su-

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1        perintendent may treat the day that the incom-  
2        plete filing was filed as the filing date if the  
3        incompleteness is found to be immaterial or not  
4        to have delayed, impeded or interfered with the  
5        ability of the bureau or any party to respond to,  
6        investigate or process the filing.

7        7. Standard for approval. This subsection ap-  
8        plies to determination of just and reasonable rates  
9        for a filing.

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

13                (1) Just and reasonable and not excessive,  
14                inadequate or unfairly discriminatory;

15                (2) Based only on a just and reasonable  
16                profit; and

17                (3) Based on reported loss reserves, in-  
18                cluding the discount rates applied to those  
19                reserves, that do not result in rates that  
20                are excessive, inadequate or unfairly dis-  
21                criminatory.

22        B. In establishing just and reasonable rates,  
23        the superintendent shall consider:

24                (1) The reasonableness of any return on  
25                capital and surplus allocable to the cover-  
26                age of risks in this State;

27                (2) The reasonableness of the amounts of  
28                capital and surplus allocable to the cover-  
29                age of risks in this State;

30                (3) The reported investment income earned  
31                or realized from funds generated from busi-  
32                ness in this State;

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- 1                   (4) The reported loss reserves, including  
2                   the methods and the interest rates used in  
3                   determining the present value for reported  
4                   reserves;
- 5                   (5) The reported annual losses and loss ad-  
6                   justment expenses;
- 7                   (6) The measures taken to contain costs,  
8                   including loss control, loss adjustment and  
9                   employee safety engineering programs;
- 10                   (7) The relationship of the aggregate  
11                   amount of operating expenses reported by all  
12                   companies to the annual operating expenses  
13                   reported in the filing and the annual insur-  
14                   ance expense exhibits filed by each company  
15                   with the bureau; and
- 16                   (8) The operating and management efficiency  
17                   of the companies.
- 18                   C. The justness and reasonableness of rates  
19                   shall be determined for the period in which the  
20                   rates are in effect.
- 21                   D. The filer shall have the burden of proving  
22                   that the rates meet the requirements of this sec-  
23                   tion and Title 24-A, chapters 23 and 25.
- 24                   E. The superintendent may not approve an in-  
25                   crease or decrease in rates unless he finds that  
26                   the information supplied in the filing and sworn  
27                   testimony is accurate and sufficient to meet the  
28                   requirements of this section.
- 29                   F. For the introduction of a new rate for a new  
30                   classification or the adjustment of a single rate  
31                   for an existing classification, the requirements  
32                   of paragraph A, subparagraph (1); subsection 2;  
33                   subsection 4, paragraphs B to E; and subsections  
34                   8, 9, 10, 12 and 13 shall apply. The superintend-

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1           ent shall establish the new rate at a level which  
2           is not unfairly discriminatory in relation to the  
3           currently approved rates for other classifica-  
4           tions.

5           8. Public record. A rate filing shall be a pub-  
6           lic record and shall be available for public review  
7           and inspection.

8           9. Information for parties and intervenors. A  
9           party or intervenor may make written application to  
10          the superintendent for an order that a filer produce  
11          any information relevant to whether the filing rates  
12          meet the requirements of this section and Title 24-A,  
13          except for information relating to a particular  
14          claim. If the filer fails to furnish the information  
15          within the time prescribed by the superintendent, the  
16          party or intervenor making the request may make writ-  
17          ten application to the superintendent for an order  
18          dismissing the filing. If, after a hearing, the su-  
19          perintendent determines that the failure to furnish  
20          the information was without good cause, he shall is-  
21          sue an order for dismissal of the filing.

22          10. Public hearing. The superintendent shall  
23          hold a public hearing, as provided in Title 24-A,  
24          sections 229 and 235, on each filing. The public  
25          hearing shall be conducted no sooner than 30 days and  
26          no later than 120 days of the date the rate filing is  
27          deemed complete by the superintendent, unless the su-  
28          perintendent extends these limits under subsection 6.  
29          The superintendent shall establish just and reason-  
30          able rates and state his findings in a written order  
31          issued within 180 days from the date the filing is  
32          completed, unless he extends this limit under subsec-  
33          tion 6. If the superintendent denies or dismisses a  
34          filing, any further filing shall be deemed to be a  
35          new filing, subject to this public hearing require-  
36          ment.

37          11. Subsequent filing. A filer may not file a  
38          rate filing within 180 days of receiving a rate in-



1     crease or decrease.

2             12. Procedure; rules. Subject to the applicable  
3 requirements of the Maine Administrative Procedure  
4 Act, Title 5, chapter 375, the superintendent may  
5 adopt rules establishing procedures for the adminis-  
6 tration of this section, including, but not limited  
7 to, procedures governing submission of petitions for  
8 intervenor status, prefiling of testimony and exhib-  
9 its, information requests, subpoenas, prehearing con-  
10 ferences and conduct of hearings.

11             13. Costs. For the purpose of determining wheth-  
12 er a filing meets the requirements of this section,  
13 the superintendent may employ staff personnel and  
14 outside consultants. The reasonable costs related to  
15 the review of workers' compensation rate filings, in-  
16 cluding conduct of the hearing, shall be borne by the  
17 advisory organization or insurer making the filing.

18             14. Application. This section applies as pro-  
19 vided in Title 24-A, chapter 25, subchapter II.'

20             Further amend the bill by striking out all of the  
21 emergency clause and inserting in its place the fol-  
22 lowing:

23             'Emergency clause. In view of the emergency  
24 cited in the preamble, this Act shall take effect as  
25 follows:

26             Part A - Sections 3, 5 to 9, 15 to 21, 24 to 27,  
27 30, 32, 34, 40, 41 and 43 to 54 shall take effect on  
28 June 30, 1985, and shall apply only as to injuries  
29 occurring on and after that date. The remainder of  
30 Part A shall take effect on January 1, 1986, and  
31 shall apply only as to injuries occurring on and after  
32 January 1, 1986.

33             Part B - The following sections within Part B,  
34 section 5 shall take effect on July 1, 1985: Sec-  
35 tions 2341 and 2346; section 2348, subsections 1, 4,

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1 5 and 10; section 2350, subsection 1, paragraph E and  
2 subsection 2, paragraph F; and section 2355. Part B,  
3 section 6 shall take effect on January 1, 1987, and  
4 the remainder of Part B shall take effect on January  
5 1, 1986.'

6 Further amend the bill in the fiscal note by add-  
7 ing at the end the following:

8 'The assessment on insurers for actual paid  
9 losses is expected to raise \$375,000 and \$1,130,000  
10 for the Employment Rehabilitation Program in fiscal  
11 years 1985-86 and 1986-87, respectively.'

1

STATEMENT OF FACT

2 This amendment enacts the Workers' Compensation  
3 Competitive Rating Act in order to promote competi-  
4 tion in the workers' compensation insurance market in  
5 this State. In the current prior approval process,  
6 insurers file rate requests through a central rating  
7 bureau and the Superintendent of Insurance is respon-  
8 sible for approving or disapproving the rates before  
9 they may be used. There is little opportunity or in-  
10 centive for one insurance company to charge different  
11 rates than other companies do. The report of the Spe-  
12 cial Study Commission on Workers' Compensation Insur-  
13 ance criticized this system because in producing one  
14 set of rates for all insurers, it stifles price com-  
15 petition, protects inefficient insurers and reduces  
16 the options available to employers purchasing insur-  
17 ance. The Legislature believes that a competitive  
18 rating system would alleviate these problems, lower  
19 insurance prices for employers and lead to more equi-  
20 table treatment of employers with good safety  
21 records.

22 Under this amendment, each insurer will file and  
23 use its own rates without the need to first make a  
24 complex rate filing and obtain the superintendent's  
25 approval. Safeguards include the Superintendent of  
26 Insurance's authority to monitor the market and to  
27 disapprove rates that are excessive, inadequate and  
28 thereby a threat to the carrier's solvency or which  
29 are unfairly discriminatory. In addition, if the su-  
30 perintendent finds that a reasonable degree of compe-  
31 tition does not exist in a market, he may place it  
32 back under the prior approval system and determine  
33 insurance rates.

34 To encourage competition, the amendment enacts  
35 several mechanisms designed to give incentives to em-  
36 ployers to maintain safe workplaces and to ensure  
37 that employers with good records are not required to  
38 subsidize those with poor records. These include ex-  
39 perience rating, merit rating for employers too small

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1 to be experienced rated, scheduled rating and a sys-  
2 tem of surcharges for those with the poorest records.

3 The amendment establishes 2 insurance pools, the  
4 Accident Prevention Account and the Safety Pool.

5 The Accident Prevention Account is limited to em-  
6 ployers with a demonstrably poor safety record. The  
7 insurance rates provide for premium surcharges based  
8 on loss experience. The surcharges serve as an incen-  
9 tive to improve loss records, yet are limited to pre-  
10 vent rate increases so large that they threaten the  
11 employers' ability to stay in business.

12 The Safety Pool ensures that small employers with  
13 good safety records and loss experience are not  
14 relegated to the Accident Prevention Account solely  
15 because of their small size. These employers are  
16 least able to bargain for favorable insurance rates.  
17 A strong competitive market will lead to increased  
18 opportunities for these small employers to obtain in-  
19 surance in the voluntary market, but the Safety Pool  
20 exists as a safety mechanism for these employers.

21 To provide a reasonable transition period, maxi-  
22 mum rates are fixed at the current level until Janu-  
23 ary 1, 1987, and rates may not increase by more than  
24 10% in 1987 and 1988. The amendment also contains a  
25 "pass-through provision" whereby insurance carriers  
26 pass savings resulting from decreases in workers'  
27 compensation benefits along to employers through de-  
28 creased premiums.

29 The "pass-through" provision requires an 8% re-  
30 duction in current premium rates. The amount of this  
31 pass-through is based on the estimated savings in in-  
32 surance expenses because of the benefit changes  
33 adopted in this bill. These estimated savings were  
34 generated from figures prepared by the National Coun-  
35 cil on Compensation Insurance. In addition, the re-  
36 duction is also based on estimated savings from the  
37 administrative changes in the workers' compensation

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1 procedures that were adopted in 1983. This estimate  
2 was also based on projections and estimates by the  
3 National Council on Compensation Insurers. Finally,  
4 the reduction also takes into account the fact that  
5 investment income has never been considered in estab-  
6 lishing the current workers compensation insurance  
7 rates, even though it is now a required factor. Be-  
8 cause the pass-through is only an estimate, though it  
9 is based on the best available information, the  
10 amendment also requires the Superintendent of Insur-  
11 ance to investigate and report on actual realized  
12 savings, and recommend any necessary adjustments.

13 Finally, this amendment incorporates technical  
14 changes in the bill to correct errors and incorporate  
15 the competitive rating provisions with the adminis-  
16 trative and benefit changes.

17

4327061185

Filed by Rep. Brannigan of Portland  
Reproduced and distributed under the direction of the  
Clerk of the House

6/12/85

(Filing No. H-394)