

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 724

H.P. 540 House of Representatives, March 11, 1987
Reference to the Committee on Labor suggested and ordered
printed.

EDWIN H. PERT, Clerk

Presented by Representative ARMSTRONG of Wilton.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-SEVEN

AN ACT to Amend the Workers' Compensation
Rating Laws.

1
2
3

4 Be it enacted by the People of the State of Maine as
5 follows:

6 Sec. 1. 24-A MRSA §2301, as amended by PL 1977
7 c. 694, §415, is further amended to read:

8 §2301. Purpose of chapter; interpretation

9 The purpose of this chapter is to promote the
10 public welfare by regulating insurance rates, in ac-
11 cordance with the intent of Congress as expressed in
12 Public Law 15 -- 79th Congress, to the end that they
13 shall not be excessive, inadequate or unfairly dis-
14 criminatory, and shall be just and reasonable, and to
15 authorize and regulate cooperative action among in-

1 surers in rate making and in other matters within the
2 scope of this chapter. Nothing in this chapter is in-
3 tended to prohibit or discourage reasonable competi-
4 tion, or to prohibit, or encourage except to the ex-
5 tent necessary to accomplish the aforementioned pur-
6 pose, uniformity in insurance rates, rating systems,
7 rating plans or practices. This chapter shall be lib-
8 erally interpreted to carry into effect this section.
9 Unless otherwise specified, all hearings held under
10 this chapter shall be in accordance with the proced-
11 ures set forth in the Maine Administrative Procedure
12 Act, Title 5, chapter 375, subchapter IV.

13 Sec. 2. 24-A MRSA §2302, sub-§3, as repealed
14 and replaced by PL 1985, c. 372, Pt. B, §2, is re-
15 pealed and the following enacted in its place:

16 3. Workers' compensation shall first be subject
17 to Title 39, but any parts of this chapter not incon-
18 sistent with that Title shall also apply. The filing
19 required by Title 39, section 22-E may be made on be-
20 half of any workers' compensation insurer by a rating
21 organization licensed in accordance with section
22 2310.

23 Sec. 3. 24-A MRSA §2303, sub-§1, ¶C, as amended
24 by PL 1985 c. 372, Pt. B, §3, is further amended to
25 read:

26 C. Due consideration shall be given:

27 (1) To past and prospective loss experience
28 within and outside this State;

29 (2) To the conflagration and catastrophe
30 hazards;

31 (3) To a reasonable margin for underwriting
32 profit and contingencies;

33 (4) To dividends, savings or unabsorbed
34 premium deposits allowed or returned by in-
35 surers to their policyholders, members or
36 subscribers;

37 (5) To past and prospective expenses both
38 countrywide and those specially applicable
39 to this State;

1 (6) To all other relevant factors within
2 and outside this State; and
3 ~~(6-A) -- In the case of workers' compensation~~
4 ~~rates, consideration shall be given to the~~
5 ~~information required to be filed under Title~~
6 ~~39, section 22-B, subsections 4 and 5, and~~
7 (7) In the case of fire insurance rates,
8 consideration shall be given to the experi-
9 ence of the fire insurance business during a
10 period of not less than the most recent
11 5-year period for which such experience is
12 available.

13 Sec. 4. 24-A M RSA §2331, as enacted by PL 1985,
14 c. 372, Pt. B, §5, is repealed.

15 Sec. 5. 24-A M RSA c. 25, sub-c. III is enacted
16 to read:

17 SUBCHAPTER III
18 THE RESIDUAL MARKET RATING LAW

19 §2361. Residual market mechanism

20 Residual market mechanism means an arrangement
21 involving participation by insurers in the equitable
22 apportionment among them of insurance which may be
23 afforded applicants who are unable to obtain insur-
24 ance through ordinary methods. It includes the Acci-
25 dent Prevention Account and the Safety Pool.

26 1. Accident Prevention Account. The Accident
27 Prevention Account shall be an insurance plan that
28 provides for the equitable apportionment among insur-
29 ers of insurance which may be afforded applicants who
30 are in good faith entitled to, but unable to procure
31 that insurance through ordinary methods, because of
32 their demonstrated accident frequency problem,
33 measurably adverse loss ratio over a period of years
34 or demonstrated attitude of noncompliance with safety
35 requirements.

1 A. All insurers authorized to write workers'
2 compensation and employers' liability insurance
3 in this State shall participate in the plan.

4 B. The plan shall include an experience rating
5 system and merit rating plan whereby the premium
6 of each employer in the account is modified ei-
7 ther prospectively or retrospectively. An expe-
8 rience modification shall only be applied to the
9 manual rate of the plan. The plan shall also
10 provide for premium surcharges for employers
11 based on their specific loss experience within a
12 specific period or other factors which are rea-
13 sonably related to their risk of loss. The sen-
14 sitivity of a rating system may vary by size of
15 the risk involved.

16 C. The plan shall produce the least possible
17 subsidization of the account's loss experience
18 consistent with this subchapter and sound actuar-
19 ial principles. Subsidization shall be born
20 equally by the voluntary market and the Safety
21 Pool based premium amounts.

22 D. Commission under a plan shall be established
23 at a level that is neither an incentive nor a
24 disincentive to place an employer in the account.

25 E. An employer is eligible for insurance from
26 the Accident Prevention Account if:

27 (1) He has a loss ratio greater than 1.00
28 over the last 3 years for which data is
29 available; and

30 (2) He has attempted to obtain insurance in
31 the voluntary market and has been refused by
32 at least 2 insurers which write that insur-
33 ance in this State. For the purpose of this
34 section, an employer shall be considered to
35 have been refused if he has been offered in-
36 surance only under a retrospective rating
37 plan or plans.

38 F. A designated advisory organization shall sub-
39 mit a plan for the superintendent's approval
40 within 30 days of the effective date of this sec-

1 tion. A plan or amendment shall not take effect
2 until approved by the superintendent.

3 (1) The following applies to premium
4 surcharges.

5 (a) No premium surcharges may be ap-
6 plied until on or after January 1,
7 1986.

8 (b) Premium surcharges apply to a pre-
9 mium that is experience or merit rating
10 modified.

11 (c) Premium surcharges may not exceed
12 10% prior to January 1, 1989.

13 (d) Premium surcharges shall be based
14 on an insured's adverse deviation from
15 expected incurred losses in this State.
16 The surcharge shall be based on the ra-
17 tio of "A" to "B" where:

18 (i) "A" is the actual incurred
19 losses of a risk during the previ-
20 ous 3-year experience period as
21 reported; and

22 (ii) "B" is the expected incurred
23 losses of a risk during that peri-
24 od as calculated under the uniform
25 experience or merit rating plan
26 times the risks current experience
27 or merit rating modification fac-
28 tor.

29 (e) The premium surcharge shall be as
30 follows:

31	<u>Ratio of "A" to "B"</u>	<u>Surcharge</u>
32	<u>Less than 1.20</u>	<u>None</u>
33	<u>1.20 or greater, but</u>	
34	<u>less than 1.30</u>	<u>5%</u>

1	<u>1.30 or greater, but</u>	
2	<u>less than 1.40</u>	<u>10%</u>
3	<u>1.40 or greater, but</u>	
4	<u>less than 1.50</u>	<u>15%</u>
5	<u>1.50 or greater</u>	<u>20%</u>

6 G. The Accident Prevention Account shall be sub-
7 ject to Title 39, section 22-E and shall be con-
8 sidered to be an insurer under this subchapter.

9 2. Safety pool. The Safety Pool is an insurance
10 plan that provides for an alternative source of in-
11 surance for employers with good safety records.

12 A. The Safety Pool intends to operate with the
13 framework of the voluntary insurance market.

14 (1) The Safety Pool is not a state fund and
15 the State shall have no proprietary interest
16 in the Safety Pool or contributions made to
17 it.

18 (2) The Safety Pool shall be exempt from
19 any budgetary control or supervision by
20 state agencies, except to the extent an in-
21 surance company is so supervised or con-
22 trolled.

23 B. An employer shall be eligible for the Safety
24 Pool if he:

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

29 (2) Has a loss ratio which does not exceed
30 1.0 over the last 3 years for which data is
31 available; or

32 (3) Has been in business for less than 3
33 years, provided that his eligibility shall

1 terminate if his loss ratio exceeds 1.0 at
2 the end of any year.

3 C. A member of the Safety Pool who becomes inel-
4 igible under paragraph B, shall be ordered to
5 leave the Safety Pool after notice under Title
6 39, section 23, subsection 1.

7 D. The Safety Pool shall be subject to Title 39,
8 section 22-E and shall be considered to be an in-
9 surer under this subchapter.

10 (1) There should be no subsidization of the
11 Safety Pool's loss experience by employers
12 not in the Safety Pool.

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

16 E. Every insurance company which is a partici-
17 phant in the Accident Prevention Account shall al-
18 so be a participant in the Safety Pool.

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

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

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

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

35 (4) A plan, or any amendment to it, shall
36 not take effect until approved by the super-
37 intendent.

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

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

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

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

14 (4) The total earned premium, paid losses,
15 reserves and incurred losses; and

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

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

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

32 B. The Public Advocate, as appointed under Title
33 35, section 1-A, shall be a party to proceedings
34 under Title 39, section 22-E, relating to rates
35 for the Accident Prevention Account or Safety
36 Pool.

37 C. A filer requesting a proceeding under Title
38 39, section 22-E, relating to rates for the Acci-

1 dent Prevention Account or Safety Pool, shall pay
2 to the superintendent at the time of the filing a
3 filing fee, which shall be immediately credited
4 to the Public Advocate. The fee shall be segre-
5 gated and expended for the purpose of employing
6 outside consultants to fulfill the requirements
7 of paragraph B and any portion not so expended
8 shall be returned to the filer. For a filing
9 filed in 1985, 1986, or 1987, the fee shall be
10 \$75,000; in 1988, \$65,000; and in 1989 or after
11 that date, \$50,000. If filings in the Accident
12 Prevention Account and the Safety Pool are made
13 together, only one fee shall be paid, which shall
14 be evenly divided between the 2 filers.

15 D. The designated advisory organization may make
16 and file the plan of operation, rates, rating
17 plans, rules and policy forms for the Accident
18 Prevention Account or Safety Pool, or both.

19 4. Review. The superintendent shall review the
20 rates, including rates for individual classifications
21 and subclassifications, in the Accident Prevention
22 Account and the Safety Pool at least once every 2
23 years and may review rates more frequently if he be-
24 lieves it necessary.

25 Sec. 6. 39 MRSA §22-C, as amended by PL 1985, c.
26 372, Pt. B, §7, is repealed.

27 Sec. 7. 39 MRSA §22-D, as enacted by PL 1985, c.
28 372, Pt. B, §8, is repealed.

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

30 §22-E. Approval of insurance policies and rates by
31 insurance superintendent

32 Every insurance company issuing workers' compen-
33 sation insurance policies covering the payment of
34 compensation and benefits provided for in this Act
35 shall file with the superintendent a copy of the form
36 of the policies and no such policy may be issued un-
37 til the form has been approved by the superintendent.
38 The insurance company shall file its classification
39 of risks and premium rates, and any subsequent pro-
40 posed classification of these risks and rates, none

1 of which shall take effect until the superintendent
2 has determined rates which are just and reasonable
3 and adequate for the risks to which they respectively
4 apply. The superintendent may require the filing of
5 specific rates for workers' compensation insurance,
6 including classifications of risks, experience or any
7 other rating information from insurance companies au-
8 thorized to transact the insurance in this State, and
9 may make or cause to be made the investigations as
10 may be deemed necessary in order for the superintend-
11 ent to establish rates which are not excessive, inad-
12 equiate or unfairly discriminatory, and are just and
13 reasonable and permitting the rates to be promulgated
14 for the use of the companies.

15 STATEMENT OF FACT

16 This bill addresses the manner in which rates are
17 established in workers' compensation insurance. The
18 current circumstances generate that a dramatic revi-
19 sion of the law is necessary to ensure that workers'
20 compensation insurance is available to employers and
21 employees in the State. This bill returns to the
22 all-industry rating law in light of the noncompeti-
23 tive market conditions which prevail.

24 1922030487