

# MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 1556

H.P. 1145 House of Representatives, May 13, 1987  
Reference to the Committee on Banking and Insurance  
suggested and ordered printed.

EDWIN H. PERT, Clerk  
Presented by Speaker MARTIN of Eagle Lake.

Cosponsored by Representative RYDELL of Brunswick,  
Senators THERIAULT of Aroostook and BUSTIN of Kennebec.

STATE OF MAINE

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

**AN ACT to Establish an Insurance Commission.**

1  
2

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

5 **Sec. 1. 2 MRSA §6, sub-§2, as repealed and re-**  
6 **placed by PL 1981, c. 705, Pt. L, §§1 to 3, is**  
7 **amended to read:**

8 **2. Range 90.** The salaries of the following  
9 state officials and employees shall be within salary  
10 range 90:

11 Superintendent of Banking;

12 Bureau of Consumer Credit Protection Superintend-  
13 ent;

1 State Tax Assessor; and  
2 Superintendent Members of the Insurance  
3 Commission.

4 **Sec. 2.** 2 MRSA §6, sub-§4, as amended by PL  
5 1985, c. 746, §1, and as repealed by PL 1985, c.  
6 785, Pt. B, §2, is repealed and the following enacted  
7 in its place:

8 4. Range 88. The salaries of the following  
9 state officials and employees shall be within salary  
10 range 88:

- 11 State Purchasing Agent;
- 12 Director, Arts and Humanities Bureau;
- 13 Director, State Museum Bureau;
- 14 Director of the Bureau of Parks and Recreation;
- 15 State Director of Alcoholic Beverages;
- 16 Executive Director, Retirement System;
- 17 Director of Public Lands;
- 18 State Librarian;
- 19 Director of Employee Relations;
- 20 Director, Bureau of Air Quality Control;
- 21 Director, Bureau of Land Quality Control;
- 22 Director, Bureau of Water Quality Control;
- 23 Director, Bureau of Oil and Hazardous Materials  
24 Control; and
- 25 Administrator, Insurance Commission.

26 **Sec. 3.** 24 MRSA §2326, as enacted by PL 1979, c.  
27 558, §5, is amended to read:

28 §2326. Appeals from order or decision of Insurance  
29 Commission

1 Any person whose interests are substantially and  
2 directly affected and aggrieved by an order or deci-  
3 sion of the superintendent Insurance Commission or  
4 any party to a hearing held pursuant to section 2322  
5 may appeal therefrom as provided in Title 24-A, sec-  
6 tion 236 283.

7 Sec. 4. 24 MRSA §2412, as enacted by PL 1975, c.  
8 442, is amended to read:

9 §2412. Examinations

10 The superintendent Insurance Commission shall  
11 make an examination into the affairs of the associa-  
12 tion at least annually. Such examination shall be  
13 conducted and the report thereon filed in the manner  
14 prescribed in Title 24-A, sections ~~227~~ 267 to ~~227~~  
15 274. The expense of every such examination shall be  
16 borne and paid by the association.

17 Sec. 5. 24-A MRSA §5, sub-§1, as repealed and  
18 replaced by PL 1973, c. 585, §6, is repealed and the  
19 following enacted in its place:

20 1. Commission. "Commission" means the Insurance  
21 Commission.

22 Sec. 6. 24-A MRSA c. 3, as amended, is repealed.

23 Sec. 7. 24-A MRSA c. 3-A is enacted to read:

24 CHAPTER 3-A

25 THE INSURANCE COMMISSION

26 §251. Commission

27 There is established the Insurance Commission.

28 1. Commission; bureau head. The Insurance Com-  
29 mission shall head the Bureau of Insurance.

30 2. Seal of office. The commission shall have a  
31 seal of office of a suitable design, bearing the  
32 words "Insurance Commission of the State of Maine."  
33 It shall file an impression of the seal, duly certi-

1 fied by the commission under oath, with the Secretary  
2 of State.

3 3. Principal office. The commission's principal  
4 office shall be in Augusta.

5 4. Divisions. Within the bureau there shall be  
6 such divisions, not expressly provided for or prohib-  
7 ited by law, as the commission deems advisable for  
8 the discharge of its duties.

9 §252. Members

10 The Insurance Commission shall consist of 3 mem-  
11 bers appointed by the Governor, subject to review by  
12 the joint standing committee of the Legislature hav-  
13 ing jurisdiction over banking and insurance and sub-  
14 ject to confirmation by the Legislature.

15 1. Terms. Each member shall be appointed for a  
16 term of 6 years. Each member of the commission shall  
17 devote full time to his duties. Each term shall end  
18 on March 31st of the 6th year of the term. A commis-  
19 sioner may continue to serve beyond the end of his  
20 term until a duly qualified successor is appointed.  
21 Any vacancy occurring in the commission shall be  
22 filled by appointment for the unexpired portion of  
23 the term in which that vacancy occurs.

24 2. Chairman. One member of the commission shall  
25 be designated by the Governor as chairman.

26 3. Policies. The basic policies of the commis-  
27 sion are to be set by the commission. Each commis-  
28 sioner is entitled to full access to the Bureau of  
29 Insurance staff and to any information available at  
30 the bureau.

31 4. Chairman; duties. The chairman shall be the  
32 principal executive officer of the commission in car-  
33 rying out its policies and shall preside at meetings  
34 of the commission. The chairman shall be responsible  
35 for the expedient organization of the work of the  
36 commission. When absent one working day or more, the  
37 chairman shall name another commissioner to act as  
38 chairman. For any particular hearing or series of  
39 hearings before the commission, the chairman may as-

1 sign a commissioner, including the chairman, to at-  
2 tend.

3 5. Administrative director. The commission  
4 shall appoint an administrative director. The admin-  
5 istrative director shall keep a full and minute  
6 record of the proceedings of the commission which  
7 shall be open to public inspection at all times. The  
8 administrative director shall have authority to cer-  
9 tify all official acts of the commission, administer  
10 oaths, issue subpoenas and issue all processes, no-  
11 tices, orders or other documents necessary to the  
12 performance of the duties of the commission. The ad-  
13 ministrative director shall administer the activities  
14 of the bureau, under the director of the commission.

15 §253. Staff

16 Subject to the Civil Service Law, Title 5, sec-  
17 tion 7039, the commission may appoint and dismiss for  
18 cause such personnel as conduct of its office and the  
19 bureau may require.

20 §254. Independent technical, professional services

21 The commission may contract, from time to time,  
22 for such additional actuarial, examination, rating  
23 and other technical and professional services as it  
24 may require for the discharge of its duties.

25 §255. Prohibited interests; rewards

26 1. Conflict of interest. The members of the  
27 commission, the administrative director or any exam-  
28 iner or employee of the bureau shall not be connected  
29 with the management or be holder of a material number  
30 of shares of any insurer, insurance holding company,  
31 insurance agency or broker or be pecuniarily inter-  
32 ested in any insurance transaction, except as a poli-  
33 cyholder or claimant under a policy; except that, if  
34 a conflict of interest does not exist on the part of  
35 any such individual, the commission may employ and  
36 retain from time to time insurance actuaries, exam-  
37 iners, accountants and other technicians who are inde-  
38 pendently practicing their professions even though  
39 from time to time similarly employed or retained by  
40 insurers or others.

1 2. Exceptions. Subsection 1 shall not be deemed  
2 to prohibit:

3 A. Receipt by any such individual of fully  
4 vested commissions or fully vested retirement  
5 benefits to which he is entitled by reason of  
6 services performed prior to becoming a member of  
7 the commission, the administrative director or  
8 prior to employment in the bureau;

9 B. Investment in shares of regulated diversified  
10 investment companies; or

11 C. Mortgage loans made under customary terms and  
12 in ordinary course of business.

13 3. Additional compensation prohibited. The mem-  
14 bers of the commission, the administrative director  
15 or any employee or technician employed or retained by  
16 the bureau shall not be given or receive, directly or  
17 indirectly, any fee, compensation, loan, gift or oth-  
18 er thing of value in addition to the compensation and  
19 expense allowance provided by or pursuant to the law  
20 of this State or by contract with the commission, for  
21 any service rendered or to be rendered as that mem-  
22 ber, director, employee or technician or in connec-  
23 tion with that source.

24 §256. Delegation of powers

25 1. Agents of commission. The commission may  
26 delegate to the administrative director, examiner or  
27 an employee of the bureau the exercise or discharge  
28 in the commission's name of any power, duty or func-  
29 tion, whether ministerial, discretionary or of what-  
30 ever character, vested in or imposed upon the commis-  
31 sion.

32 2. Official acts. The official act of any per-  
33 son acting in the commission's name and by its au-  
34 thority shall be deemed an official act of the com-  
35 mission.

36 §257. General powers; duties

37 1. Enforcement of provisions. The commission  
38 shall enforce the provisions of and execute the du-  
39 ties imposed upon it by this Title.

1           2. Expressed or implied powers. The commission  
2 shall have the powers and authority expressly vested  
3 in it by or reasonably implied from this Title.

4           3. Additional powers. The commission shall have  
5 such additional rights, powers and duties as may be  
6 provided by other laws.

7           §258. Rules

8           Subject to the Maine Administrative Procedure  
9 Act, Title 5, chapter 375, subchapter II, the commis-  
10 sion may make, amend and repeal rules to aid the ad-  
11 ministration of this Title. No such rule may extend,  
12 modify or conflict with any law of this State or the  
13 reasonable implications of any law of this State.

14          §259. Orders; notices in general

15           1. Effective when signed. Orders and notices of  
16 the commission shall be effective only when in writ-  
17 ing signed by it or by its authority.

18           2. Contents. Every order of the commission  
19 shall state its effective date and shall concisely  
20 state:

21           A. Its intent or purpose;

22           B. The grounds on which it is based; and

23           C. The provisions of this Title pursuant to  
24 which action is taken or proposed to be taken;  
25 but failure to designate a particular provision  
26 shall not deprive the commission of the right to  
27 rely on that provision.

28           3. Written notice; delivery. An order or notice  
29 may be given by delivery to the person to be ordered  
30 or notified or by mailing it, postage prepaid, ad-  
31 ressed to that person at his principal place of  
32 business or residence as last of record in the bu-  
33 reau. The order or notice shall be deemed to have  
34 been given when deposited in a mail depository of the  
35 United States post office and the affidavit of the  
36 individual who mailed the order or notice shall be  
37 prima facie evidence. Written notice of the party's



1 rights to review or appeal, the action required and  
2 the time within which action shall be taken in order  
3 to appeal shall be given to each party with the deci-  
4 sion.

5 §260. Enforcement

6 1. Court order. The commission may, through the  
7 Attorney General of this State, invoke the aid of the  
8 Superior Court through proceedings instituted in any  
9 county of this State to enforce any lawful order made  
10 or action taken by it. In those proceedings, the Su-  
11 perior Court may make such orders, either preliminary  
12 or final, as it deems proper under the facts estab-  
13 lished before it.

14 2. Criminal prosecution. If the commission has  
15 reason to believe that any person has violated any  
16 provision of this Title or any other law applicable  
17 to insurance operations for which criminal prosecu-  
18 tion is provided and would be in order, it shall give  
19 the information relative to that violation to the At-  
20 torney General. The Attorney General shall promptly  
21 institute such action or proceedings against such  
22 person as in his opinion the information may require  
23 or justify.

24 3. Other jurisdictions. The Attorney General,  
25 upon request of the commission, may proceed in the  
26 courts of any other state or in any federal court or  
27 agency to enforce an order or decision of any court  
28 proceeding or in any administrative proceeding before  
29 the commission.

30 §261. Violation of rules, orders; penalty

31 Any person who knowingly violates any rule or or-  
32 der of the commission shall be subject to such sus-  
33 pension or revocation of certificate of authority or  
34 license as may be applicable under this Title for vi-  
35 olation of the provision to which that rule or order  
36 relates.

37 §262. Records; inspection; destruction

38 1. Permanent accounts. The commission shall  
39 carefully preserve in the bureau and in permanent

1 form a correct account of all its transactions and of  
2 all fees and money received, together with all finan-  
3 cial statements, examination reports, correspondence,  
4 filings and documents duly received by the bureau.

5 2. Public inspection; exception. All records of  
6 the bureau shall be subject to public inspection, ex-  
7 cept as otherwise expressly provided by law as to  
8 particular matters; and except that records, corre-  
9 spondence and reports of investigations in connection  
10 with actual or claimed violations of this Title or  
11 prosecution or disciplinary action for those viola-  
12 tions shall be confidential. The confidential nature  
13 of any such record, correspondence or report shall  
14 not limit or affect use of the record, correspondence  
15 or report by the commission in any such prosecution  
16 or action.

17 3. Subpoenas. All records and documents of the  
18 bureau are subject to subpoena by a court of compe-  
19 tent jurisdiction.

20 4. Obsolete records. The commission may destroy  
21 unneeded or obsolete records and filings in the bu-  
22 reau in accordance with provisions and procedures ap-  
23 plicable to administrative agencies of the State in  
24 general.

25 §263. Annual report

26 1. Contents. As soon as practical after the annual  
27 financial statements have been received from the  
28 authorized insurers, the commission may make a writ-  
29 ten report to the Governor showing with respect to  
30 the preceding calendar year:

31 A. The receipts and expenses of the bureau for  
32 the year;

33 B. A summary of the insurance business trans-  
34 acted in this State;

35 C. A summary of the financial condition of each  
36 authorized insurer, as shown by its most recent  
37 financial statement on file with the commission;

1 D. Such recommendations as it deems advisable  
2 relative to amendment or supplementation of the  
3 insurance laws; and

4 E. Such other information and matters as it  
5 deems to be in the public interest relative to  
6 the insurance business in this State.

7 2. Copies available. If the report is printed,  
8 the commission shall furnish a copy upon request to  
9 the insurance supervisory official of other states  
10 and to authorized insurers and, if copies are availa-  
11 ble for the purpose, to other persons who so request  
12 and upon payment by those persons of such reasonable  
13 charge for the report as may be fixed by the commis-  
14 sion.

15 §264. Publications; price

16 The commission may have the directory of autho-  
17 rized insurers, of licensed insurance representa-  
18 tives, license examination material, insurance laws  
19 and related laws and rules under its administration  
20 published in pamphlet form, from time to time, and  
21 may fix a price for each copy to cover cost of print-  
22 ing and mailing.

23 §265. Interstate cooperation

24 The commission may communicate on request of the  
25 insurance supervisory official of any state, province  
26 or country any information which is its duty by law  
27 to ascertain in respect to authorized insurers.

28 §266. Investigations authorized

29 In addition to examinations and investigations  
30 expressly authorized, the commission may conduct such  
31 investigations of insurance matters as it deems prop-  
32 er upon reasonable cause to determine whether any  
33 person has violated any provision of this Title or to  
34 secure information useful in the lawful administra-  
35 tion of any such provision. The cost of the investi-  
36 gations shall be borne by the State.

37 §267. Examination of insurers

1           1. Frequency of examinations. For the purpose  
2 of determining its financial condition, fulfillment  
3 of its contractual obligations and compliance with  
4 the law, the commission shall examine the affairs,  
5 transactions, accounts, records and assets of each  
6 authorized insurer and of any person as to any matter  
7 relevant to the financial affairs of the insurer or  
8 to the examination, as often as it deems advisable.  
9 Except as otherwise expressly provided, it shall ex-  
10 amine each domestic insurer not less frequently than  
11 every 5 years. Examination of an alien insurer shall  
12 be limited to its insurance transactions, assets,  
13 trust deposits and affairs in the United States, ex-  
14 cept as otherwise required by the commission.

15           2. Initial certificates. The commission shall  
16 in like manner examine each insurer applying for an  
17 initial certificate of authority to transact insur-  
18 ance in this State.

19           3. Foreign reports. In lieu of making its own  
20 examination, the commission may, in its discretion,  
21 accept a full report of the last recent examination  
22 of a foreign or alien insurer, certified by the in-  
23 surance supervisory official of another state.

24           4. Cooperation with other states. As far as  
25 practical, the examination of a foreign or alien in-  
26 surer shall be made in cooperation with the insurance  
27 supervisory officials of other states in which the  
28 insurer transacts business.

29           §268. Financial audit requirements

30           1. Purpose. The purpose of this section is to  
31 provide the commission with a means of improved fi-  
32 nanical monitoring of insurers doing business in this  
33 State. This mechanism of increased financial sur-  
34 veillance of insurers shall not be a substitute for  
35 financial examinations required or authorized by this  
36 Title generally.

37           2. Definitions. As used in the section, unless  
38 the context otherwise indicates, the following terms  
39 have the following meanings.

1        A. "Accountant" or "independent certified public  
2        accountant" means an independent certified public  
3        accountant or firm licensed to practice in the  
4        State or in any state recognizing similar recip-  
5        rocal licensing requirements and who is a member  
6        in good standing of the American Institute of  
7        Certified Public Accountants. It also means, in  
8        the case of Canadian and British domiciled compa-  
9        nies, a Canadian or British chartered accountant.

10       B. "Audited financial report" means a written  
11       report which meets the requirements of subsection  
12       4.

13       C. "Insurer" means any insurance company doing  
14       business in the State pursuant to this Title and  
15       includes, but is not limited to, all life, acci-  
16       dent and health, property and casualty, title,  
17       direct writing reinsuring companies and surplus  
18       lines companies regulated by the Bureau of Insur-  
19       ance.

20       3. Audits required. All insurers, excepting in-  
21       surers transacting business in this State pursuant to  
22       the terms of chapter 51, shall cause to be conducted  
23       an annual audit by an independent certified public  
24       accountant and shall file an audited financial report  
25       with the commission on or before June 30th for the  
26       year ending December 31st preceding. An extension of  
27       the filing deadline may be granted by the commission  
28       upon a showing by the insurer or its accountant that  
29       there exists valid justification for such an exten-  
30       sion.

31       4. Content of annual audited financial report-  
32       ing. Annual audited financial reporting shall con-  
33       sist of the following.

34       A. Financial statements furnished under this  
35       section shall be examined by independent certi-  
36       fied public accountants in accordance with gener-  
37       ally accepted auditing standards as prescribed by  
38       the American Institute of Certified Public Ac-  
39       countants. The opinion of the accountant shall  
40       cover all years for which a financial presenta-  
41       tion is made.

1 The opinion expressed concerning the financial  
2 statements filed under this section shall conform  
3 with the accounting practices prescribed or per-  
4 mitted by the commission or the insurance super-  
5 visory official of the insurer's state of domi-  
6 cile. Insurers may elect to present financial  
7 statements filed under this section on the basis  
8 of generally accepted accounting principles if  
9 such statements contain a reconciliation of  
10 shareholders equity, surplus funds and results of  
11 operations to the statutory basis of accounting  
12 required for insurers generally.

13 The opinion shall be expressed to the insurer by  
14 the accountant on his letterhead and shall show  
15 the address of the office issuing that opinion,  
16 shall be manually executed and shall be dated.

17 B. Financial statements, as a minimum, shall  
18 consist of:

19 (1) Balance sheet;

20 (2) Statement of gain or loss from opera-  
21 tions;

22 (3) Statement of change in financial posi-  
23 tion;

24 (4) Statement of change in capital paid-up,  
25 gross paid-in and contributed surplus and  
26 unassigned funds, surplus funds; and

27 (5) Notes to financial statements.

28 C. The statement shall include an independent  
29 certified public accountant's report respecting  
30 evaluation of internal controls.

31 D. The statement shall include an independent  
32 certified public accountant's letter attesting to  
33 his qualifications, his possession of license and  
34 his subscription to the code of professional eth-  
35 ics and pronouncements issued by the American In-  
36 stitute of Certified Public Accountants.

1       5. Rules authorized. The commission shall  
2 promulgate such rules as shall be necessary to effec-  
3 tuate provisions of this section.

4       6. Application. For those insurers doing busi-  
5 ness in this State which are subject to this section,  
6 the filing of the annual audited financial reports  
7 required under this section shall be due each June  
8 30th.

9       7. Exemptions. Upon written application of any  
10 insurer subject to this section, the commission may  
11 grant an exemption of the filing requirements under  
12 this section if the commission finds upon review of  
13 the application that compliance would constitute a  
14 financial hardship upon the insurer.

15 If an insurer's annual statement reflects business in  
16 this State in an amount less than \$100,000 in written  
17 premium for the preceding year, the insurer is exempt  
18 from the filing requirements of this section with re-  
19 spect to that year.

20       8. Required notice concerning adverse financial  
21 condition. Each insurer retaining an independent  
22 certified public accountant to represent it with re-  
23 spect to the report which the insurer is required to  
24 file pursuant to this section shall, as a condition  
25 of its written terms of engagement of the accountant,  
26 require that:

27       A. The accountant immediately notify in writing  
28 the chairman of the board of directors of the in-  
29 surer and the commission upon any determination  
30 by the independent certified public accountant  
31 that the insurer has materially misstated its fi-  
32 ancial condition as reported in the annual  
33 statement required under section 423 for the year  
34 ending December 31st preceding; and

35       B. If the accountant, subsequent to the date of  
36 the audited financial report required by this  
37 section, becomes aware of material subsequent  
38 facts which would have affected his report, the  
39 accountant shall provide the pertinent informa-  
40 tion upon his determination to the parties iden-  
41 tified in this subsection.

1 §269. Registration, regulation, supervision and ex-  
2 amination of holding company systems, agents,  
3 promoters and others

4 1. Examination. For purposes of ascertaining  
5 compliance with law or relationships and transactions  
6 between any such person as defined in this section  
7 and any insurer or proposed insurer, the commission  
8 may as often as it deems advisable examine the ac-  
9 counts, records, documents and transactions pertain-  
10 ing to or affecting the insurance affairs or proposed  
11 insurance affairs or transactions of the insurer or  
12 proposed insurer as may be in the possession of any  
13 holding company, its subsidiaries or affiliates as is  
14 necessary to ascertain the financial condition or le-  
15 gality of conduct of the insurer or proposed insurer.  
16 The investigatory and examination authority shall al-  
17 so extend to the examination of:

18 A. Any business entity structured to hold the  
19 stock of an insurance company or person holding  
20 the shares of voting stock or policyholder  
21 proxies of an insurer as voting trustee or other-  
22 wise, for the purpose of controlling the manage-  
23 ment of that stock;

24 B. Any insurance agent, broker, general agent,  
25 surplus lines broker, adjuster, consultant, in-  
26 surer representative or any person holding him-  
27 self out as any of those persons;

28 C. Any person having a contract under which he  
29 enjoys by terms or in fact the exclusive or domi-  
30 nant right to manage or control the insurer; and

31 D. Any person in this State engaged in, or pro-  
32 posing to be engaged in, or holding himself out  
33 as so engaging or proposing or assisting in the  
34 promotion, formation or financing of an insurer  
35 or insurance holding corporation or corporation  
36 or other group to finance an insurer or the pro-  
37 duction of its business.

38 2. Definitions. As used in this section, unless  
39 the context otherwise indicates, the following terms  
40 have the following meanings.



1 A. "Affiliate of," or a person "affiliated  
2 with," a specific person means a person who di-  
3 rectly or indirectly controls, is controlled by  
4 or is under common control with the person speci-  
5 fied.

6 B. Control means the following:

7 (1) "Control," including "controlling,"  
8 "controlled by" and "under common control  
9 with," means the possession, direct or indi-  
10 rect, of the power to direct or cause the  
11 direction of the management and policies of  
12 a person, whether through the ownership of  
13 voting securities, by contract other than a  
14 commercial contract for goods or  
15 nonmanagement services, or otherwise, unless  
16 the power is solely the result of an offi-  
17 cial position with or a corporate office  
18 held by the person. Control shall be pre-  
19 sumed to exist if any person, directly or  
20 indirectly, owns, controls, holds with the  
21 power to vote or holds proxies representing  
22 10% or more of the voting securities or vot-  
23 ing insurance policies, in the case of mutu-  
24 al or reciprocal insurers, or guaranty capi-  
25 tal shares if a mutual insurer has estab-  
26 lished a guaranty fund, of any other person.  
27 Two or more domestic mutual insurance compa-  
28 nies who have restricted their licensed ter-  
29 ritories to the State of Maine shall not be  
30 deemed to be subject to this section merely  
31 because the insurance companies commonly  
32 share facilities, incurred expenses, person-  
33 nel services or otherwise utilize cost allo-  
34 cations based on generally accepted account-  
35 ing principles, including pro rata sharing  
36 of assumed risks.

37 (2) Notwithstanding the presumption of con-  
38 trol contained in subparagraph (1), the com-  
39 mission, upon application of the insurance  
40 company, may determine that the insurer is  
41 not controlled by the person presumed to  
42 control it. In addition, the commission, af-  
43 ter notice and an opportunity to be heard,  
44 may determine, notwithstanding the presump-

1 tion in subparagraph (1), that a person does  
2 control an insurance company or companies.

3 C. "Insurance holding company system" means 2 or  
4 more affiliated persons, one or more of whom is  
5 an insurer.

6 D. "Insurer" shall have the same meaning given  
7 it in section 4.

8 E. "Person" means an individual, a corporation,  
9 a corporation, pursuant to Title 24, chapter 19,  
10 which maintains and operates nonprofit hospital  
11 service plans, nonprofit medical service plans or  
12 nonprofit health care plans or any combination of  
13 those plans, a partnership, an association, a  
14 joint stock company, a business trust, an unin-  
15 corporated organization or any similar entity or  
16 any combination of the individuals or corpora-  
17 tions set out in this paragraph acting in con-  
18 cert.

19 F. "Subsidiary" of a specified person means an  
20 affiliate controlled by a person, directly or in-  
21 directly, through one or more intermediaries.

22 3. Subsidiaries of insurers. "Subsidiaries of  
23 insurers" means the following.

24 A. Any domestic insurer may invest in or other-  
25 wise acquire one or more subsidiaries as autho-  
26 rized in section 1115.

27 B. If an insurer ceases to control a subsidiary,  
28 it shall dispose of any investment in the subsid-  
29 iary made pursuant to this section within 3 years  
30 from the time of the cessation of control or  
31 within such further time as the commission may  
32 prescribe, unless, at any time after the invest-  
33 ment has been made, the investment has met the  
34 requirements for investment under any other sec-  
35 tion of this Title and the insurer has notified  
36 the commission.

37 4. Tender offers. No person may make a tender  
38 offer for or a request or invitation for tenders of,  
39 or agreement to exchange securities for or otherwise

1 acquire, any voting security or any security convert-  
2 ible into a voting security of a domestic insurer if,  
3 as a result of the consummation, the person making  
4 that tender offer, request or agreement, would, di-  
5 rectly or indirectly, acquire actual control of the  
6 insurer and no person may enter into an agreement to  
7 merge with or otherwise to acquire control of a do-  
8 mestic insurer, unless:

9 A. That person has filed with the commission a  
10 statement containing such of the following infor-  
11 mation as may be applicable and such additional  
12 information as the commission may by rule pre-  
13 scribe as necessary or appropriate in the public  
14 interest or for the protection of policyholders:

15 (1) The background and identity of all per-  
16 sons by whom or on whose behalf the pur-  
17 chases or the exchange, merger or other ac-  
18 quisition of control are to be effected;

19 (2) The source and amount of the funds or  
20 other consideration used or to be used in  
21 making the purchases or in effecting the ex-  
22 change, merger or other acquisition of con-  
23 trol and, if any part of the funds or other  
24 consideration has been or is to be borrowed  
25 or otherwise obtained for the purpose of  
26 making the purchases or effecting the ex-  
27 change, merger or other acquisition of con-  
28 trol, a description of the transaction and  
29 the names and identities of the parties;

30 (3) Any plans or proposals which those per-  
31 sons may have to liquidate the insurer, or  
32 the controlling person of the insurer to the  
33 transaction, or to sell its assets or merge  
34 it with any person or to make any other ma-  
35 ajor change in its business or corporate  
36 structure or management;

37 (4) The amount of each class of voting se-  
38 curities, or securities which may be con-  
39 verted into voting securities, of the insur-  
40 er or the controlling person, which are ben-  
41 eficially owned, and the amount of each  
42 class of voting securities or securities

1 which may be converted into voting securi-  
2 ties of the insurer or the controlling per-  
3 son concerning which there is a right to ac-  
4 quire beneficial ownership, by each person  
5 and by each affiliate;

6 (5) Information as to all contracts, ar-  
7 rangements or understandings with any person  
8 with respect to any securities of the insur-  
9 er, including, but not limited to, transfer  
10 of any of the securities, joint ventures,  
11 loan or option arrangements, puts or calls,  
12 guarantees of loans, guarantees against loss  
13 or guarantees of profits, division of losses  
14 or profits or the giving or withholding of  
15 proxies, naming the persons with whom the  
16 contracts, arrangements or understandings  
17 have been entered into, and giving the de-  
18 tails of the contracts, arrangements or  
19 understandings; and

20 (6) A copy of all such agreements, and any  
21 amendments to the agreements, to exchange or  
22 otherwise acquire securities or to merge  
23 with or otherwise to acquire control of the  
24 insurer or the controlling person; and

25 B. Approval has been given by the commission or  
26 the time for disapproval, as provided in subsec-  
27 tion 7, including any agreed extensions, has  
28 elapsed.

29 5. Tender offer material. All requests or  
30 invitations for tenders or advertisements making a  
31 tender offer or requesting or inviting tenders of the  
32 voting securities for control of a domestic insurer  
33 made by or on behalf of any such person shall contain  
34 such of the information specified in subsection 4 as  
35 the commission may prescribe and shall be filed with  
36 the commission at least 10 days prior to the time the  
37 material is first published, sent or given to securi-  
38 ty holders. Copies of any additional material solici-  
39 ting or requesting the tender offers subsequent to  
40 the initial solicitation or request shall contain  
41 such information as the commission may prescribe as  
42 necessary or appropriate in the public interest or  
43 for the protection of policyholders and stockholders

1 and shall be filed with the commission at least 10  
2 days prior to the time copies of the material are  
3 first published or sent or given to security holders.

4 6. Information as to tender offeror. If the per-  
5 son required to file the statement referred to in  
6 subsection 4 is a partnership, limited partnership,  
7 syndicate or other group, the commission may require  
8 that the information called for by subsection 4 shall  
9 be given with respect to each partner of the partner-  
10 ship or limited partnership, each member of the synd-  
11 icate or group and each person who controls the  
12 partner or member. If the person required to file the  
13 statement referred to in subsection 4 is a corpora-  
14 tion, the commission may require that the information  
15 called for by subsection 4 shall be given with re-  
16 spect to the corporation and each officer and direc-  
17 tor of the corporation and each person who is direct-  
18 ly or indirectly the beneficial owner of more than  
19 10% of the outstanding securities of the corporation.

20 7. Approval, disapproval of proposed acquisition.  
21 Approval and disapproval of acquisitions shall  
22 be as follows.

23 A. In the absence of approval by the commission,  
24 the purchase, exchange, merger of a controlling  
25 person of an insurer or other acquisition of control  
26 referred to in subsection 4, may be made un-  
27 less the commission, after a hearing is held in  
28 accordance with the procedures set forth in the  
29 Maine Administrative Procedure Act, Title 5,  
30 chapter 375, subchapter IV, disapproves the pur-  
31 chases, exchanges, merger of a controlling person  
32 of an insurer or other acquisitions of control.  
33 Any such hearing shall be held within 30 days af-  
34 ter the statement required by subsection 4 has  
35 been filed with the commission. The commission  
36 shall make a determination within 30 days after  
37 the conclusion of that hearing. The commission  
38 may disapprove any such transaction if it finds  
39 that:

40 (1) After the change of control, the domes-  
41 tic insurer could not satisfy the require-  
42 ments for the issuance of a certificate of  
43 authority according to requirements in force

1 at the time of the issuance or last renewal  
2 or continuation of its certificate of au-  
3 thority to do the insurance business which  
4 it intends to transact in this State;

5 (2) The effect of the purchases, exchanges,  
6 merger of a controlling person of the insur-  
7 er or other acquisitions of control may be  
8 substantially to lessen competition in in-  
9 surance in this State or tend to create a  
10 monopoly in this State; or violates the laws  
11 of this State or of the United States relat-  
12 ing to monopolies or restraints of trade;

13 (3) The financial condition of an acquiring  
14 person jeopardizes the financial stability  
15 of the insurer or prejudices the interest of  
16 its policyholders or, in the case of an ac-  
17 quisition of control, the interests of any  
18 remaining stockholders who are unaffiliated  
19 with the acquiring person;

20 (4) The plans or proposals which the ac-  
21 quiring person has to liquidate the insurer,  
22 to sell its assets or to merge it with any  
23 person, or to make any other major change in  
24 its business or corporate structure or man-  
25 agement, are unfair or prejudicial to poli-  
26 cyholders;

27 (5) The competence, experience and integri-  
28 ty of those persons who control the opera-  
29 tion of the insurer indicate that it is not  
30 in the interest of policyholders, stockhold-  
31 ers or the public to permit them to do so;  
32 or

33 (6) Any party to an agreement to merge with  
34 a domestic insurer is not itself an insurer;

35 B. Subparagraphs (3) to (6) do not apply to any  
36 change of control if and to the extent that the  
37 commission, by rule or by order, exempts the  
38 change of control from the provisions of such  
39 subparagraphs as not comprehended within the pur-  
40 pose of this subsection.

1 C. Merger, consolidation or bulk reinsurance as  
2 to a domestic insurer shall be effectuated only  
3 pursuant to the applicable provisions of chapter  
4 47, subchapter IV, sections 3875, 4108 and 4109,  
5 as related to organization and powers of insur-  
6 ers.

7 D. Failure to file the statement required under  
8 subsection 4 is a violation of this chapter.

9 Effectuation of or any attempt to effectuate an  
10 acquisition of, control of or merger with a do-  
11 mestic insurer within 30 days of the filing of  
12 the statement required by subsection 4, prior to  
13 the commission's decision if a hearing is held or  
14 after disapproval of the acquisition of control  
15 or merger by the commission is a violation of  
16 this chapter.

17 8. Registration of holding company system insur-  
18 ers. Registration of holding company system insurers  
19 shall be as follows.

20 A. Every insurer which is authorized to do busi-  
21 ness in this State and which is a member of an  
22 insurance holding company system shall register  
23 with the commission, except that the requirements  
24 shall not apply to a foreign insurer domiciled in  
25 a jurisdiction which in the opinion of the com-  
26 mission has adopted by law or rule disclosure  
27 statements and standards substantially similar to  
28 those contained in this chapter. Any insurer dom-  
29 iciled in a jurisdiction that has not adopted by  
30 law or rule disclosure requirements and standards  
31 substantially similar to those contained in this  
32 section may be treated as a domestic insurer for  
33 purposes of this section. Each insurer which is  
34 subject to registration under this subsection  
35 shall register within 60 days after the effective  
36 date of this section or 15 days after it becomes  
37 subject to registration, whichever is later, un-  
38 less the commission, for good cause shown, ex-  
39 tends the time for registration and then within  
40 the extended time. Nothing in this section may be  
41 construed to prohibit the commission from re-  
42 questing any authorized insurer which is a member  
43 of a holding company system and not subject to

1 registration under this section for a copy of the  
2 registration statement or other information filed  
3 by the insurer with the insurance regulatory au-  
4 thority of its state of domicile. Upon request of  
5 the insurer or of the insurance regulatory au-  
6 thority of another jurisdiction in which the in-  
7 surer is authorized to transact insurance, the  
8 commission at the insurer's expense shall furnish  
9 a copy of the registration statement or other in-  
10 formation filed by a domestic insurer with the  
11 commission pursuant to this chapter.

12 B. Every insurer subject to registration shall  
13 file a registration statement on a form provided  
14 by the commission, which shall contain current  
15 information about:

16 (1) The capital structure, general finan-  
17 cial condition, ownership and management of  
18 the insurer and of any person controlling  
19 the insurer;

20 (2) The following transactions currently  
21 outstanding between the insurer and its af-  
22 filicates:

23 (a) Loans and other investments and  
24 purchases, sales or exchanges of secu-  
25 rities of the affiliate by the insurer  
26 or of the insurer by its affiliates;

27 (b) Purchases, sales or exchanges of  
28 assets;

29 (c) Transactions not in the ordinary  
30 course of business;

31 (d) Guarantees or undertakings for the  
32 benefit of an affiliate which result in  
33 an actual contingent exposure of the  
34 insurer's assets to liability, other  
35 than insurance contracts entered into  
36 in the ordinary course of the insurer's  
37 business;

38 (e) All management and service con-  
39 tracts and all cost-sharing arrange-



1 ments, other than cost allocation ar-  
2 rangements based upon generally ac-  
3 cepted accounting principles; and

4 (f) Reinsurance agreements covering  
5 all or substantially all of one or more  
6 lines of insurance of the ceding insur-  
7 er; and

8 (3) Other matters concerning transactions  
9 between the insurer and any affiliate as may  
10 be required by the commission.

11 C. No information need be disclosed on the reg-  
12 istration statement filed pursuant to this sub-  
13 section if the information is not material to the  
14 purposes of this chapter. Unless the commission  
15 by rule or order provides otherwise, sales, pur-  
16 chases, exchanges, loans or extensions of credit  
17 or investments, involving 1/2 of 1% or less of an  
18 insurer's admitted assets as of December 31st im-  
19 mediately preceding, shall not be deemed material  
20 for purposes of this section.

21 D. Each registered insurer shall keep current  
22 the information required to be disclosed in its  
23 registration statement by reporting on forms pro-  
24 vided by the commission all material changes or  
25 additions on or before the 15th day of the month  
26 following that in which it learns of each change  
27 or addition.

28 E. The commission shall terminate the registra-  
29 tion of any insurer which demonstrates that it is  
30 no longer a member of an insurance holding compa-  
31 ny system.

32 F. Two or more affiliated insurers subject to  
33 registration under this section may file a con-  
34 solidated registration statement or consolidated  
35 reports amending their respective consolidated  
36 statements or their individual registration  
37 statements as long as such consolidated filings  
38 correctly reflect the condition of and transac-  
39 tions between the persons.

1 G. The commission may allow or require any in-  
2 surer which is authorized to do business in this  
3 State and which is part of an insurance holding  
4 company system to register on behalf of any af-  
5 filiated insurer which is required to register  
6 under paragraph A and to file all information and  
7 material required to be filed under this section.

8 H. This section does not apply to any insurer,  
9 information or transaction if and to the extent  
10 that the commission by rule or order exempts it  
11 from the provisions of this section as not com-  
12 prehended within the purposes of this section.

13 I. Any person may file with the commission a  
14 disclaimer of affiliation with any authorized in-  
15 surer or such a disclaimer may be filed by the  
16 insurer or any member of an insurance holding  
17 company system. The disclaimer shall fully dis-  
18 close all material relationships and bases for  
19 affiliation between the person and the insurer,  
20 as well as the bases for disclaiming the affilia-  
21 tion. After a disclaimer has been filed, the in-  
22 surer shall be relieved of any duty to register  
23 or report under this section which may arise out  
24 of the insurer's relationship with that person  
25 unless and until the commission disallows the  
26 disclaimer. The commission shall disallow a dis-  
27 claimer only after a hearing with notice to all  
28 parties in interest and after making specific  
29 findings of fact to support the disallowance.

30 9. Transactions with affiliates; standards. Ma-  
31 terial transactions by registered insurers with their  
32 affiliates occurring after the effective date of this  
33 chapter shall be subject to the following standards.

34 A. The terms shall be fair and reasonable.

35 B. The books, accounts and records of each party  
36 shall be so maintained as to disclose clearly and  
37 accurately the nature and details of the transac-  
38 tion.

39 C. The insurer's surplus to policyholders fol-  
40 lowing any dividends or distributions to stock-  
41 holder affiliates shall be reasonable in relation

1 to the insurer's outstanding liabilities and ade-  
2 quate to its financial needs.

3 Any material transaction which is not in conform-  
4 ity with this subsection is a violation of this  
5 Title and chapter and, in addition to the penal-  
6 ties contained in subsection 14, shall render the  
7 transactions voidable at the initiative of the  
8 commission or otherwise under applicable law.

9 10. Insurer's surplus; adequacy factors. For the  
10 purposes of this chapter, in determining whether an  
11 insurer's surplus to policyholders is reasonable in  
12 relation to the insurer's outstanding liabilities and  
13 adequate to its financial needs, the following fac-  
14 tors, among others, shall be considered:

15 A. The size of the insurer as measured by its  
16 assets, capital and surplus, reserves, premium  
17 writings, insurance in force and other appropri-  
18 ate criteria;

19 B. The extent to which the insurer's business is  
20 diversified among the several lines of insurance;

21 C. The number and size of the risks insured in  
22 each line of business;

23 D. The extent of the geographical dispersion of  
24 the insurer's insured risks;

25 E. The nature and extent of the insurer's rein-  
26 surance program;

27 F. The quality, diversification and liquidity of  
28 the insurer's investment portfolio;

29 G. The recent past and projected future trend in  
30 the size of the insurer's surplus to policyhold-  
31 ers;

32 H. The surplus to policyholders maintained by  
33 other comparable insurers;

34 I. The adequacy of the insurer's reserves; and

35 J. The quality and liquidity of investments in  
36 subsidiaries or affiliates.

1           11. Dividends and distributions. No insurer sub-  
2 ject to registration under this section may pay any  
3 extraordinary dividend or make any other extraordi-  
4 nary distribution to its stockholders until 60 days  
5 after the commission has received notice of the dec-  
6 laration of dividend or distribution and has not,  
7 within that period, disapproved the payment or the  
8 commission has approved the payment within the 60-day  
9 period. For purposes of this section, an extraordi-  
10 nary dividend or distribution is any dividend or dis-  
11 tribution, together with other dividends or distribu-  
12 tions made within the preceding 12 months, which ex-  
13 ceeds the greater of 10% of the insurer's surplus to  
14 policyholders as of December 31st of the immediate  
15 preceding 12 months or the net gain from operations  
16 of the insurer if the insurer is a life insurer or  
17 the net investment income if the insurer is not a  
18 life insurer, for the 12-month period ending December  
19 31st of the year immediately preceding, but shall not  
20 include pro rata distributions of any class of the  
21 insurer's own securities. Notwithstanding any other  
22 provision of law, an insurer may declare an extraor-  
23 dinary dividend or distribution which is conditional  
24 upon the commission's approval of the dividend or  
25 distribution, and such a declaration shall confer no  
26 rights upon stockholders until the commission has ap-  
27 proved the payment of the dividend or distribution or  
28 the commission has not disapproved the payment within  
29 the period referred to in this subsection. The  
30 insurer's surplus following any dividends or distri-  
31 butions to shareholder affiliates shall be reasonable  
32 in relation to the insurer's outstanding liabilities  
33 and shall be adequate to meet its financial needs.

34           12. Verification of information. The commission  
35 may verify the registration statement and other in-  
36 formation as follows.

37           A. Subject to the limitations contained in this  
38 subsection and in addition to the powers which  
39 the commission has under this chapter relating to  
40 the examination of insurers, the commission may  
41 order any insurer registered under this chapter  
42 to produce such records, books or papers in the  
43 possession of the insurer or affiliates as are  
44 necessary to verify the information required to  
45 be contained in the insurer's registration state-

1 ment and any additional information pertinent to  
2 transactions between the insurer and affiliates.  
3 Books, records, papers and information shall be  
4 examined in the manner prescribed in this chapter  
5 relating to the time, place and expense of exami-  
6 nation, except that expenses incurred by the com-  
7 mission in examining affiliated companies not de-  
8 defined as "insurer" shall be borne by the person  
9 examined subject to the limitations of section  
10 275, subsection 1. No credit may be taken for any  
11 equity value of an affiliated company which in-  
12 ures to a parent insurer and comprises a portion  
13 of that insurer's admitted assets.

14 B. The purposes of the examination shall be to  
15 verify the registration statement and any addi-  
16 tion or amendment to the registration statement  
17 made or required pursuant to this chapter.

18 13. Confidential communications. Any registra-  
19 tion statement, tender offer or request or invitation  
20 for tenders, advertisement making a tender offer or  
21 requesting or inviting tenders of voting securities,  
22 option to purchase, agreement to merge or consolidate  
23 or contract to manage filed pursuant to this section,  
24 including any duly authenticated copy in the posses-  
25 sion of any person subject to this section, shall be  
26 a confidential communication, shall not be subject to  
27 a subpoena and shall not be made public by the com-  
28 mission without prior written consent of the insurer,  
29 unless the commission determines that the interests  
30 of policyholders, stockholders or the public will be  
31 served by the publication, in which event, it may  
32 make a public record or publish all or any part of  
33 such a communication in such manner as it may deem  
34 appropriate. The distribution of reports on examina-  
35 tion referred to in section 274 shall not be regarded  
36 as confidential communications and shall be excepted  
37 from the confidential requirements of this subsec-  
38 tion.

39 14. Penalties. Penalties for violations of this  
40 section shall be as follows.

41 A. Any person who willfully violates this sec-  
42 tion or the rules promulgated by the commission  
43 under authority of this section, or any person

1 who willfully, in a filing pursuant to subsection  
2 4 or a registration pursuant to subsection 8,  
3 paragraph B, makes any untrue statement of a ma-  
4 terial fact or omits to state any material fact  
5 required to be stated in the filing or registra-  
6 tion or necessary to make the statements not mis-  
7 leading, shall upon conviction be fined not more  
8 than \$1,000 or imprisoned for not more than 3  
9 years, or both.

10 B. Any person who is found, after notice and op-  
11 portunity to be heard, to have willfully violated  
12 this section or any rule promulgated by the com-  
13 mission under the authority of this section  
14 shall, in addition to any other penalty provided  
15 by law, forfeit to this State the sum of \$50 for  
16 a first violation and an additional sum of \$25  
17 for each day the violation continues.

18 C. In addition to other remedies and penalties  
19 provided in this section or otherwise available  
20 under the laws of this State, any violation of  
21 this section is declared to be an unfair method  
22 of competition or an unfair or deceptive act and  
23 practice in the business of insurance subject to  
24 the provisions of chapter 23 and, in addition,  
25 the commission may, after notice and hearing:

26 (1) Refuse to issue, refuse to renew or re-  
27 issue, revoke or suspend for a period not  
28 exceeding one year any license or certifi-  
29 cate of authority issued or to be issued to  
30 any person found to have violated any of the  
31 provisions of this section;

32 (2) Impose by order and administrative for-  
33 feiture upon the person, enforceable by the  
34 revocation, suspension or refusal to issue,  
35 renew or reissue any such license or li-  
36 censes, or otherwise, pursuant to the laws  
37 of this State, in an amount not to exceed  
38 \$100 for each violation and for each day's  
39 continuance of the violation;

40 (3) Proceed in a court of competent juris-  
41 isdiction within or without this State against  
42 the person, if an insurer, upon the applica-

1 ble grounds provided for the rehabilitation,  
2 conservatorship or liquidation of an insurer  
3 or for an injunction to prevent a violation  
4 of this section or to reverse or hold  
5 invalid any transaction made in violation of  
6 this section;

7 (4) Issue administrative orders to require  
8 compliance with this section, including the  
9 filing of evidence of compliance and  
10 periodic reporting as to such compliance,  
11 enforceable by such revocation, suspension  
12 or refusal to issue, renew or reissue any  
13 such license or licenses or otherwise pursu-  
14 ant to the laws of this State; or

15 (5) Any or all of subparagraphs (1) to (4).

16 15. Additional powers. The powers, remedies,  
17 procedures and penalties provided in this section  
18 shall be in addition to, and not in limitation of,  
19 any other powers, remedies, procedures and penalties  
20 otherwise provided by law.

21 16. Separability of provisions. If this section  
22 or the application to this section to any person or  
23 circumstance is held invalid, the invalidity shall  
24 not affect other provisions or applications of this  
25 section which can be given effect without the invalid  
26 provision or application and, for this purpose, the  
27 provisions of this section are separable.

28 17. Jurisdiction of courts. Any person obtaining  
29 or attempting to obtain control of a domestic insurer  
30 shall subject by that act the person to the jurisdic-  
31 tion of the courts of this State.

32 18. Rules. The commission may, upon notice and  
33 opportunity for all interested parties to be heard,  
34 issue such reasonable rules and orders as necessary  
35 to carry out and effectuate this section.

36 19. Supplemental to existing provisions. This  
37 section, as to holding company systems, supplements  
38 in particular those provisions contained in sections  
39 407, subsection 2; 410, subsection 1, paragraph B;  
40 413; 425; 1115; 1136; 3414; 3474; 3475; 3476; 3483;

1 3875 and 4407; and the provisions of this section  
2 shall be deemed to supersede or modify any such pro-  
3 visions or any other provisions of the Maine Insur-  
4 ance Code, as it may be amended, only to the extent  
5 inconsistent with the code.

6 §270. Conduct of examination; access to records;  
7 correction

8 1. Designated examiners. Whenever the commis-  
9 sion determines to examine the affairs of any person,  
10 it shall designate one or more examiners and instruct  
11 them as to the scope of the examination. The examiner  
12 shall, upon demand, exhibit his official credentials  
13 to the person under examination.

14 2. Fairness and impartiality. The commission  
15 shall conduct each examination in an expeditious,  
16 fair and impartial manner.

17 3. Administration of oaths. Upon any such exam-  
18 ination, the commission, or the examiner if specifi-  
19 cally so authorized in writing by the commission,  
20 shall have power to administer oaths and to examine  
21 under oath any individual as to any matter relevant  
22 to the affairs under examination or relevant to the  
23 examination.

24 4. Freedom of access required. Every person be-  
25 ing examined, its officers, attorneys, employees,  
26 agents and representatives shall make freely availa-  
27 ble to the commission or its examiners the accounts,  
28 records, documents, files, information, assets and  
29 matters of the person in his possession or control  
30 relating to the subject of the examination and shall  
31 facilitate the examination.

32 5. Failure to maintain records. If the commis-  
33 sion or examiner finds any accounts or records to be  
34 inadequate, or inadequately kept or posted, the com-  
35 mission may employ experts to reconstruct, rewrite,  
36 post or balance them at the expense of the person be-  
37 ing examined, if that person has failed to maintain,  
38 complete or correct those records or accounting after  
39 the commission or examiner has given him written no-  
40 tice and a reasonable opportunity to do so.



1           6. Documents not removable. Neither the commis-  
2 sion nor any examiner may remove any record, account,  
3 document, file or other property of the person being  
4 examined from the offices or place of that person,  
5 except with the written consent of that person in ad-  
6 vance of the removal or pursuant to an order of court  
7 duly obtained. This provision shall not be deemed to  
8 affect the making and removal of copies or abstracts  
9 of any such record, account, document or file.

10           7. Interference with examination. Any individu-  
11 al who refuses without just cause to be examined un-  
12 der oath or who willfully obstructs or interferes  
13 with the examiners in the exercise of their authority  
14 pursuant to this section, shall be subject to a fine  
15 of not more than \$2,500 or imprisonment for less than  
16 a year, or by both.

17           §271. Appraisal of asset

18           1. Appointment of appraisers. If the commission  
19 deems it necessary to value any asset involved in  
20 such an examination, it may make written request of  
21 the person being examined to appoint one or more ap-  
22 praisers who, by reason of education, experience or  
23 special training and disinterest, are competent to  
24 appraise the asset. Selection of any such appraiser  
25 shall be subject to the written approval of the com-  
26 mission. If no such appointment is made within 20  
27 days after the request for appointment is delivered  
28 to that person, the commission may appoint the ap-  
29 praiser or appraisers.

30           2. Expedited appraisal; copies. Any such ap-  
31 praisal shall be expeditiously made and a copy of the  
32 appraisal furnished to the commission and to the per-  
33 son being examined.

34           3. Expense. The reasonable expense of the ap-  
35 praisal shall be borne by the person being examined.

36           §272. Examination report; contents; prima facie evi-  
37 dence in certain proceedings

38           1. Factual basis, verification. Upon completion  
39 of an examination, the examiner in charge shall make  
40 a true report which shall be comprised only of facts

1 appearing upon the books, records or other documents  
2 of the person examined, or from an appraisal of as-  
3 sets, or as ascertained from the sworn testimony of  
4 its officers or agents or other individuals examined  
5 concerning its affairs and the conclusions and recom-  
6 mendations as may reasonably be warranted from the  
7 facts. The report of examination shall be verified by  
8 the oath of the examiner in charge of the examina-  
9 tion.

10 2. Evidence in proceedings. A report of exami-  
11 nation of an insurer verified according to subsection  
12 1 shall be prima facie evidence in any delinquency  
13 proceeding against the insurer, its officers, employ-  
14 ees or agents upon the facts stated in the report,  
15 whether or not the report has then been filed in the  
16 bureau as provided in section 273.

17 §273. Examination reports; distribution, hearing; as  
18 evidence

19 1. Notice. The commission shall deliver a copy  
20 of the examination report to the person examined, to-  
21 gether with a notice affording that person 20 days or  
22 such additional reasonable period as the commission  
23 for good cause may allow, within which to review the  
24 report and recommend changes in the report.

25 2. Reports confidential until after hearing. If  
26 so requested by the person examined, within the peri-  
27 od allowed under subsection 1, or if deemed advisable  
28 by the commission without the request, the commission  
29 shall hold a hearing relative to the report and shall  
30 not file the report in the bureau until after the  
31 hearing and order on the report; except that the com-  
32 mission may furnish a copy of the report to the Gov-  
33 ernor, Attorney General or Treasurer of State pending  
34 final decision. If copies are so furnished, they  
35 shall be deemed confidential information until the  
36 other requirements of this section with regard to ex-  
37 amination reports have been satisfied.

38 3. Report filed with bureau. If no hearing has  
39 been requested or held, the examination report, with  
40 the modifications, if any, as the commission deter-  
41 mines proper, shall be accepted by the commission and  
42 filed in the bureau upon expiration of the review pe-

1 riod provided for in subsection 1. The report, in any  
2 event, shall be so accepted and filed within 6 months  
3 after final hearing on it.

4 4. Commission to forward copy. The commission  
5 shall forward to the person examined a copy of the  
6 examination report as filed, together with any recom-  
7 mendations or statements relating to the report which  
8 it determines proper.

9 5. Notification of board of directors. If the  
10 report is as to examination of a domestic insurer, a  
11 copy of the report, or a summary of the report ap-  
12 proved by the commission, when filed in the bureau,  
13 together with the recommendations or statements of  
14 the commission or its examiner, shall be presented by  
15 the insurer's chief executive officer to the  
16 insurer's board of directors or similar governing  
17 body at a meeting of that body which shall be held  
18 within 30 days next following receipt of the report  
19 in final form by the insurer. A copy of the report  
20 shall also be furnished by the secretary of the in-  
21 surer, if incorporated, or by the attorney-in-fact,  
22 if a reciprocal insurer, to each member of the  
23 insurer's board of directors or board of governors,  
24 if a reciprocal insurer, and the certificate of the  
25 secretary or attorney-in-fact that a copy of the ex-  
26 amination report has been so furnished shall be  
27 deemed to constitute knowledge of the contents of the  
28 report by each member.

29 6. Report. The report when so filed in the bu-  
30 reau shall be admissible in evidence in any action or  
31 proceeding brought by the commission against the per-  
32 son examined or against its officers, employees or  
33 agents. In any such action or proceeding, the commis-  
34 sion or its examiners may at any time testify and of-  
35 fer proper evidence as to information secured or mat-  
36 ters discovered during the course of an examination,  
37 whether or not a written report of the examination  
38 has been either made, furnished or filed in the bu-  
39 reau.

40 §274. Examination report

41 The report of examination of those persons, part-  
42 nerships, corporations or other business associations

1 which are subject to examination by the Insurance  
2 Commission as provided for in sections 267 and 268  
3 shall, upon satisfaction of the requirements of sec-  
4 tion 273, be filed in the bureau as a public record,  
5 except for any information relating to an individual  
6 insured or individual applicant for insurance, which  
7 shall be deemed confidential.

8 §275. Examination expense

9 1. Reasonable expenses and compensation. The  
10 expense of examination of an insurer or of any person  
11 regulated under this chapter, shall be borne by the  
12 person examined. The expense shall include only the  
13 reasonable and proper hotel and travel expenses of  
14 the commission and its examiners and assistants, in-  
15 cluding expert assistance, and examiners furnished  
16 for the purpose by other states in which the insurer  
17 is authorized to transact insurance, reasonable com-  
18 ensation as to such examiners and assistants and in-  
19 cidental expenses as necessarily incurred in the ex-  
20 amination. As to expense and compensation involved in  
21 any such examination, the commission may give due  
22 consideration to scales and limitations recommended  
23 by the National Association of Insurance Commission-  
24 ers and outlined in the examination manual sponsored  
25 by that association.

26 2. Prompt payment required. The person examined  
27 shall promptly pay to the commission the expenses of  
28 the examination upon presentation by it of a reason-  
29 ably detailed written statement of expenses.

30 3. Annual payments. In lieu of payment of exam-  
31 ination expense required in subsection 1, a domestic  
32 insurer shall have the right, at its option, of mak-  
33 ing an annual payment to the commission of an exami-  
34 nation expense allotment in an amount equal to .001  
35 of its total admitted assets as of the end of the  
36 preceding calendar year and which payment shall be  
37 made on March 1st with the filing of the insurer's  
38 annual statement with the commission; or, if the  
39 insurer's admitted assets exceed \$10,000,000, the in-  
40 surer shall have the right, at its further option, to  
41 pay to the commission with respect to any examination  
42 the lesser of:

1 A. The expense of the examination as determined  
2 pursuant to subsections 1 and 2;

3 B. An amount equal to .001 of the first  
4 \$10,000,000 of the insurer's admitted assets plus  
5 .0002 of the remainder of the assets, limited,  
6 however, to insurers whose admitted assets do not  
7 exceed \$25,000,000 as such assets are shown by  
8 the insurer's financial statement filed with the  
9 commission for the year-end next preceding the  
10 commencement of the examination; or

11 C. If the admitted assets of the insurer exceed  
12 \$25,000,000, an annual payment of an examination  
13 expense allotment of 1/5 of an amount equal to  
14 .001 of the first \$10,000,000 of the insurer's  
15 admitted assets, plus .0002 of the next  
16 \$15,000,000 of the assets, plus .000175 of the  
17 remainder of such assets as are shown by the  
18 insurer's financial statement filed with the com-  
19 mission for the preceding calendar year. Payment  
20 shall be made on March 1st with the filing of the  
21 insurer's annual statement with the commission.

22 §276. Administrative procedures; hearings in general

23 1. Hearing options. The commission may hold a  
24 hearing without request of others for any purpose  
25 within the scope of this Title.

26 2. Hearing mandatory. The commission shall hold  
27 a hearing:

28 A. If required by any provision of this Title;  
29 or

30 B. Upon written application for a hearing by a  
31 person aggrieved by any act or impending act or  
32 by any report, rule or order of the commission,  
33 other than an order for the holding of a hearing,  
34 or order on a hearing, or pursuant to the order,  
35 of which hearing the person had notice.

36 3. Time for filing application; contents. Any  
37 such application must be filed with the commission  
38 within 90 days after the person knew or reasonably  
39 should have known of the act, impending act, failure,

1 report, rule or order, unless a different period is  
2 provided for by other applicable law and, in which  
3 case, the other law shall govern. The application  
4 shall briefly state the respects in which the appli-  
5 cant is so aggrieved, together with the ground to be  
6 relied upon for the relief to be demanded at the  
7 hearing. The commission may require that the applica-  
8 tion be signed and sworn to.

9       4. Time for hearing. If the commission finds  
10 that the application is timely and made in good  
11 faith, that the applicant would be so aggrieved if  
12 his grounds are established and that the grounds oth-  
13 erwise justify the hearing, he shall hold the hearing  
14 within 30 days after filing of the application, or  
15 within 30 days after the application has been sworn  
16 to, whichever is the later date, unless in either  
17 case, the hearing is postponed by mutual consent.  
18 The hearing shall be held in conformity with the  
19 Maine Administrative Procedure Act, Title 5, chapter  
20 375.

21       5. Failure to hold hearing. Failure to hold the  
22 hearing upon application of a person entitled to the  
23 hearing is a denial of the relief sought and shall be  
24 the equivalent of a final order of the commission on  
25 hearing for the purpose of an appeal under section  
26 283.

27       6. Action pending hearing. Pending the hearing  
28 and decision on any commission action, the commission  
29 may suspend or postpone the effective date of its  
30 previous action.

31 §277. Notice of hearing

32       1. Notice required. Notice of hearing shall be  
33 given in conformity with the Maine Administrative  
34 Procedure Act, Title 5, chapter 375.

35       2. Time period; waiver of notice. Except when a  
36 different period is expressly provided by the Maine  
37 Administrative Procedure Act, Title 5, chapter 375,  
38 or by this Title, the commission shall give written  
39 notice of hearing not less than 14 days in advance.  
40 Notice of hearing may be waived and the hearing held  
41 at a time mutually fixed by the commission and the  
42 parties.

1     §278. Conduct of hearing

2           1. Location. The commission may hold a hearing  
3     in Augusta or any other place of convenience to par-  
4     ties and witnesses, as the commission determines. The  
5     commission or its designee shall preside at the hear-  
6     ing and shall expedite the hearing and all procedures  
7     involved in the hearing.

8           2. Rights of parties. Any party to the hearing  
9     shall have the right to appear in person and by coun-  
10    sel, to be present during the giving of all evidence,  
11    to have a reasonable opportunity to inspect all docu-  
12    mentary and other evidence and to examine and cross-  
13    examine witnesses, to present evidence in support of  
14    his interest and to have subpoenas issued by the com-  
15    mission to compel attendance of witnesses and produc-  
16    tion of evidence in his behalf. Testimony may be  
17    taken orally or by deposition and any party shall  
18    have the right of introducing evidence by interroga-  
19    tories or deposition as may obtain in a Superior  
20    Court.

21          3. Interveners. Upon timely application, the  
22    commission shall permit any person showing that he is  
23    or may be substantially and directly affected by the  
24    proceeding to intervene as a party. The commission  
25    may, by order, allow any other interested person to  
26    intervene and participate as a full or limited party  
27    to the proceeding.

28          4. Allowance or exclusion of evidence. Formal  
29    rules of pleading or of evidence need not be observed  
30    at any hearing. Evidence shall be admitted if it is  
31    the kind of evidence upon which reasonable persons  
32    are accustomed to rely in the conduct of serious af-  
33    airs. Irrelevant or unduly repetitious evidence may  
34    be excluded.

35          5. Public hearing. The hearing shall be public,  
36    unless the commission or hearing officer determines  
37    that a private hearing is in the public interest, in  
38    which case and only with the consent of all parties  
39    to the hearing, the hearing shall be private.

40          6. Hearings records. All hearings shall be re-  
41    corded in a form susceptible to transcription. The

1 recording shall be transcribed when necessary for the  
2 prosecution of an appeal. The Bureau of Insurance  
3 shall make the recordings available for inspection at  
4 the bureau's offices during normal business hours and  
5 shall make copies of recordings or transcriptions of  
6 recordings available to any person at actual cost.

7 7. Validity unaffected by attendance. The va-  
8 lidity of any hearing held in accordance with the no-  
9 tice of the hearing, or waiver of notice, shall not  
10 be affected by the failure of any person to attend or  
11 remain in attendance.

12 §279. Witnesses and documentary evidence

13 1. Subpoena powers. As to the subject of any  
14 examination, investigation or hearing being conducted  
15 by it, the commission may subpoena witnesses and ad-  
16 minister oaths or affirmations and examine any indi-  
17 vidual under oath, or take depositions and, by sub-  
18 poena duces tecum, may require the production of docu-  
19 mentary and other evidence. Any delegation by the  
20 commission of power of subpoena shall be in writing.

21 2. Conduct of witnesses. Every person subpoe-  
22 naed to appear at a hearing, examination or investi-  
23 gation shall obey the subpoena, testify truthfully,  
24 conduct himself with decorum and in no way obstruct  
25 the proceeding or purpose of the proceeding.

26 3. Witness fees. Witnesses shall be entitled to  
27 the same fees and allowances as witnesses in Superior  
28 Court; except that no insurer, agent, broker or other  
29 person subject to this Title who is a subject of the  
30 proceeding and no officer, director or employee of  
31 any of those persons, may be entitled to witness or  
32 mileage fees. No person may be excused from attending  
33 and testifying in obedience to a subpoena on the  
34 ground that the proper witness fee was not tendered  
35 or paid, unless the witness has demanded the payment  
36 as a condition precedent to attending the hearing,  
37 examination or investigation and unless that demand  
38 has not been complied with.

39 4. Perjury Any individual knowingly testifying  
40 falsely under oath or making a false affirmation, as  
41 to any matter material to any such examination, in-



1 vestigation or hearing, shall upon conviction be  
2 guilty of perjury.

3 §280. Witnesses; disciplinary proceedings

4 1. Failure to appear or produce. If any indi-  
5 vidual without reasonable cause fails to appear when  
6 summoned as a witness, refuses to answer a lawful and  
7 pertinent question, refuses to produce documentary  
8 evidence when directed to do so by the commission,  
9 deports himself in a disrespectful or disorderly man-  
10 ner at the inquiry or obstructs the proceedings by  
11 any means, whether or not in the presence of the com-  
12 mission or its designee, he is guilty of contempt and  
13 may be dealt with as provided in subsection 2.

14 2. Action for contempt. The commission or its  
15 designee, as the case may be, may file a complaint in  
16 the Superior Court, setting forth under oath the  
17 facts constituting the contempt and requesting an or-  
18 der returnable in not less than 2 nor more than 5  
19 days, directing the alleged contemner to show cause  
20 before the court why he should not be punished for  
21 contempt. Upon the return of the order, the court  
22 shall examine the alleged contemner under oath and  
23 the alleged contemner shall have an opportunity to be  
24 heard. If the court determines that the respondent  
25 has committed any alleged contempt, the court shall  
26 punish the offender as if the contempt had occurred  
27 in an action arising in or pending in the court.

28 §281. Witnesses; immunity from prosecution

29 1. Exemption from criminal prosecution. If any  
30 individual asks to be excused from attending or tes-  
31 tifying or from producing any books, papers, records,  
32 contracts, correspondence or other documents in con-  
33 nection with any examination, hearing or investigat-  
34 ing being conducted by the commission on the ground  
35 that the testimony or evidence required of him may  
36 tend to incriminate him or subject him to a penalty  
37 or forfeiture and shall, by the Attorney General, be  
38 directed to give that testimony or produce that evi-  
39 dence, he must nonetheless comply with that direc-  
40 tion, but he shall not thereafter be prosecuted or  
41 subjected to any penalty or forfeiture for or on ac-  
42 count of any transaction, matter or thing concerning

1 which he may have so testified or produced evidence  
2 and no testimony so given or evidence produced may be  
3 received against him upon any criminal action, inves-  
4 tigation or proceeding; except that no such individu-  
5 al so testifying may be exempt from prosecution or  
6 punishment for any perjury committed by him in that  
7 testimony and the testimony or evidence so given or  
8 produced shall be admissible against him upon any  
9 criminal action, investigation or proceeding concern-  
10 ing that perjury; nor may such individual be exempt  
11 from the refusal, suspension or revocation of any li-  
12 cence, permission or authority conferred, or to be  
13 conferred, pursuant to this Title.

14 2. Waiver of immunity. Any such individual may  
15 execute, acknowledge and file in the office of the  
16 commission and of the Attorney General a statement  
17 expressly waiving the immunity or privilege in re-  
18 spect to any transaction, matter or thing specified  
19 in the statement and the testimony of the individual  
20 or the evidence in relation to the transaction, mat-  
21 ter or thing may be received or produced before any  
22 judge or justice, court, tribunal, grand jury, or  
23 otherwise, and, if so received or produced, that in-  
24 dividual shall not be entitled to any immunity or  
25 privileges on account of any testimony he may so give  
26 or evidence so produced.

27 §282. Order on hearing

28 1. Quasi-judicial commission. In the conduct of  
29 hearings under this Title and making its order there-  
30 on, the commission shall act in a quasi-judicial ca-  
31 capacity.

32 2. Service of order. Within 30 days after ter-  
33 mination of a hearing, or of any rehearing thereof or  
34 reargument thereon, or within such other period as  
35 may be specified in this Title as to particular pro-  
36 ceedings, or within such further reasonable period as  
37 the commission for good cause may require, the com-  
38 mission shall make its order on hearing covering mat-  
39 ters involved in the hearing, and give a copy of the  
40 order to each party to the hearing in the same manner  
41 as notice of the hearing was given to the party; ex-  
42 cept that as to hearings held with respect to merger,  
43 consolidation, bulk reinsurance, conversion, affilia-

1 tion or change of control of a domestic insurer as  
2 provided in chapter 47 (organization and corporate  
3 procedures of domestic stock and mutual insurers),  
4 where notice of the hearing was given to all stock-  
5 holders X or Y, or both, policyholders of an insurer  
6 involved, the commission is required to give a copy  
7 of the order on hearing to the corporation and insur-  
8 er parties, to intervening parties, to a reasonable  
9 number of such stockholders or policyholders as rep-  
10 resentative of the class, and to other parties only  
11 upon written request of the parties.

12 3. Contents. The order shall contain:

13 A. A concise statement of facts found by the  
14 commission upon the evidence adduced at the hear-  
15 ing;

16 B. A concise statement of the commission conclu-  
17 sions from the facts so found;

18 C. Its order and the effective date of the or-  
19 der;

20 D. Citation of the provisions of this Title upon  
21 which the order is based; but failure to so des-  
22 ignate a particular provision shall not deprive  
23 the commission of the right thereafter to rely  
24 thereon; and

25 E. Notice of the party's right to appeal or re-  
26 view of the order, of the action required for ap-  
27 peal and of the time within which the action  
28 shall be taken in order to exercise the right.

29 4. Scope. The order may affirm, modify or re-  
30 scind action theretofore taken or may constitute tak-  
31 ing of new action within the scope of the notice of  
32 the hearing.

33 §283. Appeal from commission

34 1. Judicial review. In general, judicial review  
35 of actions taken by the commission or its representa-  
36 tives shall occur in conformity with the Maine Admin-  
37 istrative Procedure Act, Title 5, chapter 375, sub-  
38 chapter VII.

1           2. Limitations. An appeal from the commission  
2 shall be taken only from an order on hearing, or as  
3 to a matter on which the commission has failed to  
4 hold a hearing after application for hearing under  
5 section 276, or regarding a matter as to which the  
6 commission has failed to issue an order after hearing  
7 as required by section 282.

8           3. Who may appeal; time periods. Any person who  
9 was a party to the hearing may appeal from an order  
10 of the commission within 30 days after receipt of no-  
11 tice. Any person not a party to the hearing whose in-  
12 terests are substantially and directly affected and  
13 who is aggrieved by an order of the commission may  
14 appeal within 40 days from the date the decision was  
15 rendered. If the appeal is taken from the commis-  
16 sion's failure or refusal to act, the petition for  
17 review shall be filed within 6 months of the expira-  
18 tion of the time within which the action should rea-  
19 sonably have occurred.

20           4. Venue. The appeal shall be heard as a matter  
21 of right, and shall be instituted by filing a peti-  
22 tion for review in the Superior Court of Kennebec  
23 County or in any county where:

24           A. One or more of the petitioners reside or have  
25 their principal place of business; or

26           B. The activity or property which is the subject  
27 of the proceeding is located.

28           The court may grant a change of venue for good cause  
29 shown.

30           5. Contents of petition; service. The petition  
31 or complaint shall specify the grounds for appeal and  
32 the nature of the relief sought. The petition shall  
33 be served by certified mail, return receipt re-  
34 quested, upon the commission, all parties to the pro-  
35 ceeding at issue and the Attorney General.

36           6. No responsive pleading; commission to file  
37 complete record; entry of appearance by parties. No  
38 responsive pleading need be filed unless required by  
39 order of the reviewing court. Within 30 days after  
40 the petition for review is filed or within such time

1 as the court may allow on motion, the commission  
2 shall file in the court the original or a certified  
3 copy of the complete record of the proceedings under  
4 review. Within 20 days of the filing of the petition,  
5 all parties to the administrative proceeding who wish  
6 to participate in the appeal shall file a written ap-  
7 pearance which includes a statement of position with  
8 respect to the decision under review.

9 7. Application for stay. The filing of a peti-  
10 tion shall not operate as a stay of the commission's  
11 order pending judicial review. Application for a stay  
12 shall ordinarily be made first to the commission,  
13 which may issue a stay upon a showing of irreparable  
14 injury to the petitioner, a strong likelihood of suc-  
15 cess on the merits and no substantial harm to adverse  
16 parties or the general public. A motion for a stay  
17 may be made to the Superior Court, but the motion  
18 shall show that application to the commission for the  
19 relief sought is not practicable, or that application  
20 was made to the bureau and denied, or that the action  
21 of the commission did not afford the relief the peti-  
22 tioner had requested. In addition, the motion shall  
23 explain the reasons for the relief requested and the  
24 facts relied upon, which facts, if subject to dis-  
25 pute, shall be supported by affidavits. Reasonable  
26 notice of the motion for stay shall be given to all  
27 parties to the administrative proceeding. The court  
28 may condition this relief upon the posting of a bond  
29 or other appropriate security, except that no bond or  
30 security may be required of the State or any official  
31 of the State.

32 8. Review confined to record. Judicial review  
33 from an order of the commission shall be confined to  
34 the record upon which the administrative decision was  
35 based, subject to the exceptions set forth in the  
36 Maine Administrative Procedure Act, Title 5, section  
37 11006. The reviewing court may require or permit sub-  
38 sequent corrections of the record.

39 9. Court order. Following review by oral and  
40 written argument the court may:

41 A. Affirm the decision of the commission;

1 B. Remand the case to the commission for further  
2 proceedings, findings of fact or conclusions of  
3 law as the court deems necessary; or

4 C. Reverse or modify the commission's order if  
5 that decision is:

6 (1) In violation of constitutional or stat-  
7 utory provisions;

8 (2) In excess of the statutory authority  
9 invested in the commission;

10 (3) Made upon unlawful procedure;

11 (4) Affected by bias or error of law;

12 (5) Unsupported by substantial evidence on  
13 the record; or

14 (6) Arbitrary or capricious or character-  
15 ized by abuse of discretion.

16 The reviewing court shall not substitute its judgment  
17 for that of the commission on questions of fact.

18 10. Appeal to Law Court. The commission and all  
19 other parties to the review proceeding in Superior  
20 Court may obtain review of the court's judgment by  
21 appeal to the Supreme Judicial Court sitting as the  
22 Law Court. The appeal shall be taken as in other civ-  
23 il cases.

24 §284. Assessment for expense of maintaining Bureau  
25 of Insurance

26 The expense of maintaining the Bureau of Insur-  
27 ance shall be assessed annually by the Insurance Com-  
28 mission against all insurers licensed to do business  
29 in this State in proportion to their respective di-  
30 rect gross premium written on business in this State  
31 during the year ending December 31st immediately pre-  
32 ceding the fiscal year for which assessment is made.  
33 The annual assessment upon all insurers shall be ap-  
34 plied to the budget of the bureau for the fiscal year  
35 commencing July 1st. The assessment shall be in an  
36 amount not exceeding .0015 of total direct premiums

1 written. When the commission calculates the amount  
2 of the annual assessment, it shall consider, among  
3 other factors, the staffing level required to admin-  
4 ister the responsibilities of the bureau.

5 1. Expense of examination. The expense of exam-  
6 ination of an insurer or of any person regulated by  
7 section 269 shall continue to be borne by the person  
8 examined. The expense of examination consistent with  
9 section 275 shall not be considered when determining  
10 the assessment for maintaining the Bureau of Insur-  
11 ance.

12 2. Direct gross premium. Based on the annual  
13 statement filed by each insurer pursuant to section  
14 423 the commission shall ascertain the amount of di-  
15 rect gross premium it received in that year. For the  
16 purpose of this section only, "direct gross premiums"  
17 means and includes policy, membership, annuity con-  
18 siderations and other fees, policy dividends applied  
19 in payment for insurance and other considerations for  
20 insurance received by insurers, on account of poli-  
21 cies or contracts covering subjects of insurance, or  
22 risks located, resident or to be performed in this  
23 State, after deducting return premiums or dividends  
24 actually returned or credited to policyholders.

25 3. Minimum assessment. In any year in which an  
26 insurer has no direct gross premium writings in this  
27 State, or in which direct gross premium written is  
28 not sufficient to produce at the rate prescribed an  
29 amount equal to or in excess of \$100, the minimum as-  
30 essment payable by any insurer shall be \$100.

31 4. Notification of assessment. On or before  
32 April 20th of each year, the commission shall notify  
33 each insurer of the assessment due. When an exten-  
34 sion of the time of filing an annual statement is  
35 granted for good cause by the commission pursuant to  
36 section 423, subsection 1, the insurer shall be as-  
37 essed a provisional amount of \$100. Upon receipt of  
38 the insurer's annual statement, the provisional as-  
39 essment shall be adjusted to effect a final assess-  
40 ment for the fiscal year at the same rate utilized by  
41 the commission and which was levied upon all insurers  
42 by the general assessment of April 20th.

1           5. Time of payment. Payment shall be made on or  
2           before June 1st.

3           6. Revocation or suspension. If the assessment  
4           is not paid to the commission on or before the pre-  
5           scribed date, the license or certificate of authority  
6           of any insurer to transact business in this State may  
7           be revoked or suspended by the commission after a  
8           hearing or upon waiver of hearing by the insurer un-  
9           til the assessment is paid. There shall be no rein-  
10           statement of certificate of authority prior to pay-  
11           ment of the balance of the assessment.

12           7. Recalculation of assessment. Immediately  
13           following the close of each odd-numbered fiscal year,  
14           the commission shall recalculate the assessment made  
15           against each party assessed after giving recognition  
16           to actual expenditures of the bureau during the pre-  
17           ceding biennial period. On or before October 1st,  
18           the commission shall render to each party assessed a  
19           statement showing the difference between their re-  
20           spective recalculated assessment and the amount they  
21           had paid with respect to the preceding biennium. Any  
22           overpayment of annual assessment resulting from com-  
23           plying with the requirements of this section shall be  
24           refunded or, at the option of the assessed party, ap-  
25           plied as a credit against the assessment for the suc-  
26           ceeding fiscal year. Any overpayment of \$100 or less  
27           shall be applied as a credit against the assessment  
28           for the succeeding fiscal year.

29           8. Deposit with Treasurer of State. The commis-  
30           sion shall deposit all payments made pursuant to this  
31           section with the Treasurer of State. The money shall  
32           be used for the sole purpose of paying the expenses  
33           of the Bureau of Insurance.

34           9. Exclusions. This section does not apply to  
35           fraternal benefit societies, as defined in section  
36           4101; assessment mutual insurance companies, as de-  
37           fined in section 3603; joint underwriting associa-  
38           tions, subject to section 2322; and health mainte-  
39           nance organizations, as defined in section 4203.

40           Sec. 8. 24-A MRS A §415-A, 2nd ¶, as enacted by  
41           PL 1985, c. 330, §5, is amended to read:



1 If an insurer's license authority is revoked,  
2 suspended or otherwise terminated in a manner other  
3 than by its election, the superintendent commission  
4 shall issue an order which prescribes terms and con-  
5 ditions related to the license termination which  
6 shall, to the extent practicable, conform to the re-  
7 quirements governing withdrawal plans as prescribed  
8 by this section and rules promulgated under this sec-  
9 tion. In the event that an insurer attempts to ter-  
10minate its license authority in this State without  
11filing a withdrawal plan acceptable to the  
12superintendent commission, the superintendent  
13commission shall issue an order prescribing the terms  
14and conditions of the termination. Any order issued  
15pursuant to this section, including an order direct-  
16ing an insurer to produce relevant information, may  
17be enforced as provided by section ~~214~~ 260.

18 **Sec. 9. 24-A MRSA §604, sub-§2, ¶E, as enacted by**  
19 **PL 1985. c. 446, §3, is amended to read:**

20 E. Amounts assessed by the superintendent  
21 commission under section ~~237~~ 284;

22 **Sec. 10. 24-A MRSA §1115, sub-§3, as enacted by**  
23 **PL 1983, c. 759, §2, is amended to read:**

24 3. A life or health insurer may invest in any  
25 solvent institution organized and existing under the  
26 laws of this State wholly-owned and controlled by the  
27 insurer or its insurance company affiliates, or both,  
28 and formed for and limited to the purposes of acquir-  
29ing, holding and managing, exclusively for the insur-  
30er and its insurance company affiliates, assets which  
31are authorized under this chapter as eligible invest-  
32ments for the insurer. Those assets of those insti-  
33tutions shall be deemed, for all purposes of this  
34chapter, to be acquired and held directly by the in-  
35surer, pro rata, in the case of institutions of this  
36type not wholly-owned by the insurer; shall be valued  
37in accordance with the provisions of sections 981 to  
38984 and other applicable provisions of this Title;  
39and shall be located pursuant to section 3408. Those  
40institutions shall be subject to examination by the  
41superintendent commission under section ~~221~~ 267, sub-  
42section 1, and section 222 269, subsection 1.

1           **Sec. 11. 24-A MRSA §1539, sub-§3, as enacted by**  
2           **PL 1983, c. 419, §9, is amended to read:**

3           3. Notwithstanding subsections 1 and 2, the  
4           **superintendent commission** may revoke, suspend or  
5           refuse to renew any license issued under this chap-  
6           ter, pursuant to Title 5, section 10004, without pro-  
7           ceeding in conformity with chapter 3 3-A or Title 5,  
8           chapter 375, subchapter IV or VI, when:

9           A. The decision to take that action is based  
10          solely upon a conviction in court of any offense  
11          denominated in Title 5, section 5301, subsection  
12          2, or a conviction in the courts of any other  
13          state or any country of an offense which would be  
14          denominated under Title 5, section 5301, had the  
15          offense occurred in this State. Any revocation,  
16          suspension or denial of license under this para-  
17          graph shall be in accordance with Title 5, sec-  
18          tions 5302 to 5304;

19          B. The Maine license has been issued upon the  
20          basis of a reciprocal agreement with another gov-  
21          ernment and the Maine action is based upon evi-  
22          dence, in the form of a certified copy, that the  
23          authority issuing the license which provided the  
24          basis for reciprocal licensing in this State has  
25          revoked or suspended its license; or

26          C. The health or physical safety of a person or  
27          persons is in immediate jeopardy at the time of  
28          the ~~superintendent's~~ commission's action, and  
29          acting in accordance with chapter 3 3-A or Title  
30          5, chapter 375, subchapter IV or VI, would fail  
31          to adequately respond to a known risk, provided  
32          that the revocation, suspension or refusal to re-  
33          new shall not continue for more than 30 days.

34          **Sec. 12. 24-A MRSA §2165, sub-§2, as repealed**  
35          **and replaced by PL 1983, c. 394, §3, is amended to**  
36          **read:**

37          2. A desist order shall be effective upon expi-  
38          ration of the time allowed for appeals from the  
39          ~~superintendent's~~ commission's orders, regardless of  
40          whether an appeal is taken, unless stayed by the  
41          court. The filing of an appeal shall not operate as

1 a stay of the desist order pending judicial review.  
2 Application for a stay may be made as provided in  
3 section 236 283, and in Title 5, section 11004. An  
4 appeal from a desist order shall be taken in accord-  
5 ance with section 236 283, and any intervenor in a  
6 hearing held under this chapter shall have the right  
7 to appeal as so provided.

8 Sec. 13. 24-A MRSa §2166, sub-§5, as amended by  
9 PL 1973, c. 585, §12, is further amended to read:

10 5. If the superintendent commission report made  
11 under subsection 1 above, or order on hearing made  
12 under section 235 282 does not charge a violation of  
13 this chapter, then any intervenor in the proceedings  
14 may appeal therefrom within the time and the manner  
15 provided in this Title for appeals from the  
16 superintendent commission generally.

17 Sec. 14. 24-A MRSa §2328, as amended by PL 1973,  
18 c. 585, §12, is further amended to read:

19 §2328. Examinations

20 The superintendent commission shall examine the  
21 affairs, transactions, accounts and records of each  
22 rating organization licensed in this State as pro-  
23 vided in section 2310, of each advisory organization  
24 in this State as defined in section 2321, and of  
25 joint underwriters and joint reinsurers as defined in  
26 section 2322, as often as he it deems advisable, but  
27 not less frequently than once every 5 years. The ex-  
28 amination shall be conducted in the same manner and  
29 is subject to the same applicable provisions as apply  
30 to examination of insurers in chapter 3 3-A. The rea-  
31 sonable costs of any such examination shall be paid  
32 by the organization or association so examined. In  
33 lieu of any such examination, the superintendent  
34 commission may accept the report of an examination  
35 made by the insurance supervisory official of another  
36 state, pursuant to the laws of such state.

37 Sec. 15. 24-A MRSa §2330, as amended by PL 1973,  
38 c. 585, §12, is further amended to read:

39 §2330. Appeals from commission

1 Any insurer or rating organization aggrieved by  
2 any order or decision of the superintendent  
3 commission may appeal therefrom as provided in sec-  
4 tion 236 283 (appeal from the superintendent  
5 commission).

6 Sec. 16. 24-A MRSA §2354, as enacted by PL 1985,  
7 c. 372, Pt. B, §5, is amended to read:

8 §2354. Judicial review

9 An order, rule or decision of the superintendent  
10 commission made after a hearing is subject to judi-  
11 cial review in accordance with section 236 283.

12 Sec. 17. 24-A MRSA §2412, sub-§5, as amended by  
13 PL 1973, c. 585, §12, is further amended to read:

14 5. Appeals from orders of the superintendent  
15 commission disapproving any such form or withdrawing  
16 a previous approval may be taken as provided in sec-  
17 tions 229 276 to 236 283.

18 Sec. 18. 24-A MRSA §2572, first ¶, as amended by  
19 PL 1985, c. 779, §66, is further amended to read:

20 The University of Maine System, in this chapter  
21 called the "university," shall not transact in this  
22 State the business described in this chapter without  
23 first procuring a certificate of authority from the  
24 superintendent commission for that purpose. Applica-  
25 tion for this certificate shall be made on a form  
26 prescribed by the commissioner accompanied by a fil-  
27 ing fee of \$25. This certificate shall not be granted  
28 until the university conforms to the requirements of  
29 this chapter and the laws of this State prerequisite  
30 to its issue. After its issue the university shall  
31 continue to comply with the requirements of this  
32 chapter and the laws of this State. Where a hearing  
33 is held under this section the proceedings shall be  
34 conducted in accordance with chapter 3 3-A and the  
35 superintendent commission shall have all of the pow-  
36 ers granted in that chapter.

37 Sec. 19. 24-A MRSA §2572, sub-§§2 and 3, as en-  
38 acted by PL 1977, c. 261, §2, are amended to read:

1           2. Dissolution. Upon the winding up, dissolution,  
2 expiration or forfeiture of the corporate existence  
3 of the university; and

4           3. Surrender of certificate. In any event upon  
5 surrender by the university of its certificate of au-  
6 thority and cancellation of that certificate by the  
7 superintendent commission.

8           **Sec. 20.** 24-A MRSA §2572, last 2 ¶¶, as enacted  
9 by PL 1977, c. 261, §2, are amended to read:

10           The superintendent commission shall not cancel a  
11 surrendered certificate of authority until he it is  
12 satisfied by examination, or otherwise, that the uni-  
13 versity has discharged its annuity liabilities to  
14 residents of this State or satisfactorily reinsured  
15 those liabilities.

16           Notwithstanding the preceding provisions for a  
17 certificate of authority of indefinite term, if the  
18 university holds a certificate of authority under  
19 this chapter, it shall owe and pay in advance to the  
20 superintendent commission an annual fee of \$25 on ac-  
21 count of that certificate of authority until its fi-  
22 nal termination or revocation. This fee shall be for  
23 annual periods commencing on July 1st of each year  
24 and ending on June 30th of each year, shall be due on  
25 each March 1st and, if not paid, shall be delinquent  
26 on and after each April 1st.

27           **Sec. 24-A MRSA §2578,** as enacted by PL 1977, c.  
28 261, §2, is amended to read:

29           §2578. Exemptions

30           Except as prescribed in this chapter, if the uni-  
31 versity holds a certificate under section 2572, it  
32 shall be otherwise exempt from the provisions of this  
33 Title and other insurance laws of this State, except  
34 the provisions of chapters 1 and 3 3-A and chapter  
35 57, subchapters I and II.

36           **Sec. 21.** 24-A MRSA §2612-A, sub-§2, as enacted  
37 by PL 1981, c. 150, §16, is amended to read:

1           2. No such group life insurance coverage may be  
2 offered in this State by an insurer under a policy  
3 issued in another state unless this State, or another  
4 state having requirements substantially similar to  
5 those contained in subsection 1, paragraphs A, B, C  
6 and D, has made a determination that these require-  
7 ments have been met. Notwithstanding the fact that  
8 such a determination has been made, the  
9 superintendent commission may at any time schedule a  
10 hearing in accordance with sections 229 276 to 236  
11 283 to determine whether such requirements have been  
12 met. If, after hearing, the superintendent commission  
13 finds that a policy fails to meet one or more of the  
14 requirements set forth in subsection 1, he it may or-  
15 der the insurer to cease and desist from further so-  
16 licitation of participation under the policy until  
17 such time as the policy has been found by the  
18 superintendent commission to be in compliance with  
19 all such requirements.

20           **Sec. 22. 24-A MRSA §2808, sub-§2, as enacted by**  
21 **PL 1981, c. 147, §8, is amended to read:**

22           2. No group health insurance coverage may be of-  
23 fered in this State by an insurer under a policy is-  
24 sued in another state, unless this State or another  
25 state having requirements substantially similar to  
26 those contained in subsection 1, paragraphs A, B, C  
27 and D has made a determination that these require-  
28 ments have been met. Notwithstanding the fact that a  
29 determination has been made, the superintendent  
30 commission may at any time schedule a hearing in ac-  
31 cordance with the provisions of sections 229 276 to  
32 236 283 to determine whether the requirements have  
33 been met. If, after hearing, the superintendent  
34 commission finds that a policy fails to meet one or  
35 more of the requirements set forth in subsection 1,  
36 he it may order the insurer to cease and desist from  
37 further solicitation of participation under the poli-  
38 cy until such time as the policy has been found by  
39 the superintendent commission to be in compliance  
40 with all the requirements.

41           **Sec. 23. 24-A MSRA §3475, as amended by PL 1973,**  
42 **c. 585, §12, is further amended to read:**

43           §3475. Exchange of securities between insurers

1 1. Upon application of any domestic insurer, the  
2 superintendent commission is authorized to approve  
3 the fairness of the terms and conditions of the issu-  
4 ance by the insurer of any shares of its capital  
5 stock or of guaranty capital or bonds or its other  
6 securities or obligations in exchange for one or more  
7 bona fide outstanding securities, claims or property  
8 interest of any other insurer or corporation, domes-  
9 tic or foreign, or partly in such exchange and partly  
10 for cash; but only after a hearing has been held by  
11 the superintendent commission upon the fairness of  
12 such terms and conditions at which all persons to  
13 whom it is proposed to issue securities in such ex-  
14 change shall have the right to appear and be heard.

15 2. Notice of such hearing and conduct thereof  
16 shall be as provided in chapter 3 3-A (the insurance  
17 superintendent commission).

18 **Sec. 24.** 24-A MRSA §3629, sub-§2, as amended by  
19 PL 1973, c. 585, §12, is further amended to read:

20 2. Chapter 3 3-A (the insurance-superintendent  
21 commission), except that an insurer transacting in-  
22 surance only on the assessment plan shall not be sub-  
23 ject to section 228 275 (examination expense), and  
24 shall not be required to pay the expense of examina-  
25 tion of the insurer-;

26 **Sec. 25.** 24-A MRSA §4218, as amended by PL 1977,  
27 c. 694, §435, is further amended to read:

28 §4218. Rules

29 The superintendent commission may, after notice  
30 and hearing pursuant to the Maine Administrative Pro-  
31 cedure Act, Title 5, chapter 375, subchapter II,  
32 promulgate reasonable rules and-regulations as are  
33 necessary or proper to carry out this chapter. Such  
34 Those rules and-regulations shall be subject to re-  
35 view in accordance with sections 229 276 to 236 283.

36 **Sec. 26.** 24-A MRSA §4402, as amended by PL 1973,  
37 c. 585, §12, is further amended to read:

38 §4402. -- appeal from commission's order

1           If the superintendent commission has issued a  
2 summary order before hearing as provided in section  
3 4401, subsection 2, any person upon whom such order  
4 is served may waive the superintendent commission  
5 hearing and apply for any immediate judicial relief  
6 available under law and without first exhausting ad-  
7 ministrative remedies. Section 236 283 (appeal from  
8 superintendent commission) shall apply as to appeals  
9 from the superintendent's commission's order made af-  
10 ter hearing.

11           Sec. 27. 24-A MRSa §4444, sub-§2, as amended by  
12 PL 1973, c. 585, §12, is further amended to read:

13           2. Examination. The board of directors may, upon  
14 majority vote, request that the superintendent  
15 commission order an examination of any member insurer  
16 which the board in good faith believes may be in a  
17 financial condition hazardous to policyholders or the  
18 public. Within 30 days of the receipt of such re-  
19 quest, the superintendent commission shall begin such  
20 examination. The cost of the examination shall be  
21 paid by the association and the examination report  
22 shall be treated as are other examination reports. In  
23 no event shall the examination report, or any portion  
24 thereof, be released to the board of directors prior  
25 to its release to the public, but this shall not pre-  
26 clude the superintendent commission from complying  
27 with subsection 3. The superintendent commission  
28 shall notify the board of directors when the examina-  
29 tion is completed. The request for an examination  
30 shall be kept on file by the superintendent  
31 commission but shall not be open to public inspec-  
32 tion prior to the release of the examination report,  
33 or part thereof to the public, in accordance with  
34 section 227 274.

35           Sec. 28. 39 MRSa §22-C, first ¶, as reallocated  
36 by PL 1983, c. 816, Pt. B, §23, is amended to read:

37           The following provisions shall apply to approval  
38 of insurance policies and rates by the Superintendent  
39 of Insurance Commission.

40           Sec. 29. 39 MRSa §22-C, sub-§§1 and 2, as real-  
41 located by PL 1983, c. 816, Pt. B, §23, are amended  
42 to read:



1        1. Policies. Every insurance company issuing  
2 workers' compensation insurance policies covering the  
3 payment of compensation and benefits provided for in  
4 this Act shall file with the Superintendent-of Insur-  
5 ance Commission:

6            A. A copy of the form of the policies. A policy  
7 may not be issued until the superintendent Insur-  
8 ance Commission has approved the form; and

9            B. Its classification of risks and their premium  
10 rates and any subsequent proposed classifications  
11 and premium rates, which may not take effect un-  
12 til the superintendent Insurance Commission has  
13 approved them.

14 Premium rates less than those approved may be used  
15 and filed with the superintendent Insurance  
16 Commission. If the superintendent Insurance  
17 Commission has reason to believe that the filing  
18 produces rates which are inadequate or unfairly dis-  
19 criminatory, he may disapprove them under Title 24-A,  
20 chapters 23 and 25.

21        2. Approval of rates. The superintendent Insur-  
22 ance Commission shall apply the procedures and stan-  
23 dards of this section in investigating, reviewing and  
24 approving or disapproving rates.

25            A. He It may require the filing of specific  
26 rates for workers' compensation insurance, in-  
27 cluding classifications of risks, experience or  
28 any other rating information from insurance com-  
29 panies authorized to transact insurance in this  
30 State.

31            B. He It may make or cause to be made investiga-  
32 tions as he it may deem necessary to satisfy  
33 himself itself that the rates to be promulgated  
34 are just and reasonable.

35            C. He It may at any time, after public hearing,  
36 withdraw his its approval of a previously ap-  
37 proved rate filing.

38        Sec. 30. 39 MRSA §22-C, sub-§3, ¶¶D and E, as  
39 reallocated by PL 1983, c. 816, Pt. B, §23, are  
40 amended to read:

1 D. Statements or exhibits that reasonably sub-  
2 stantiate assumptions, methodology or calcula-  
3 tions used in support of the proposed rates or to  
4 generate the information or data in the filing;  
5 and identification of any of those that are known  
6 or believed to be contrary to established policy  
7 of the superintendent Insurance Commission; and

8 E. Any other information required to be included  
9 by the superintendent Insurance Commission.

10 **Sec. 31.** 39 MRSA §22-C, sub-§4, ¶A, as reallo-  
11 cated by PL 1983, c. 816, Pt. B, §23, is amended to  
12 read;

13 A. To the extent that the Maine expense and ex-  
14 perience data is not fully credible, the  
15 superintendent Insurance Commission may allow re-  
16 porting of and consider data from outside this  
17 State.

18 **Sec. 32.** 39 MRSA §22-C, sub-§5, as reallocated  
19 by PL 1983, c. 816, Pt. B, §23, is amended to read:

20 5. Additional information. The superintendent  
21 Insurance Commission may require, at any time, any  
22 additional information he it deems necessary and may  
23 reasonably extend the time periods established in  
24 subsection 9 to allow time to provide that informa-  
25 tion.

26 **Sec. 33.** 39 MRSA §22-C, sub-§6, ¶¶A, B and E, as  
27 reallocated by PL 1983, c. 816, Pt. B, §23, are  
28 amended to read:

29 A. To approve a rate filing, the superintendent  
30 Insurance Commission shall find that, from the  
31 filing and sworn testimony, the rating organiza-  
32 tion or insurer has established, in addition to  
33 all other requirements, that:

34 (1) The proposed rates are just and reason-  
35 able and not excessive, inadequate or un-  
36 fairly discriminatory;

37 (2) The profit factor used in establishing  
38 the rate requested will produce only a just

1 and reasonable return on investment allocable to the coverage of risks in this State;  
2 and  
3

4 (3) The reported loss reserves, including  
5 the discount rates applied to those reserves,  
6 are reasonable.

7 B. In determining if the proposed rates are just  
8 and reasonable, the superintendent Insurance  
9 Commission shall consider:

10 (1) The profit factor used in establishing  
11 the rate requested and its relationship to  
12 the return on the investment allocable to  
13 the coverage of risks in this State;

14 (2) The reported investment income earned  
15 or realized from funds generated from business  
16 in this State;

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

21 (4) Reported annual losses and loss adjustment  
22 expenses;

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

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

32 (7) The operating and management efficiency  
33 of the companies.

34 E. A rate filing may not be approved unless the  
35 superintendent Insurance Commission finds that  
36 the information supplied in the filing and sworn  
37 testimony is accurate and sufficient to meet the  
38 requirements of this section.

1            **Sec. 34. 39 MRSA §22-C, sub-§§8, 9, 11 and 12,**  
2 as reallocated by PL 1983, c. 816, Pt. B, §23, are  
3 amended to read:

4            **8. Information for parties and intervenors.** A  
5 party or intervenor may make written application to  
6 the superintendent Insurance Commission for an order  
7 that a rating organization or insurer, which has pre-  
8 sented a filing, produce any information relevant to  
9 whether the filing rates meet the requirements of  
10 this section and Title 24-A, except for information  
11 relating to a particular claim. If the rating orga-  
12 nization or insurer fails to furnish the information  
13 within the time prescribed by the superintendent In-  
14 urance Commission, the party or intervenor making  
15 the request may make written application to the  
16 superintendent Insurance Commission for an order dis-  
17 approving the filing. If, after a hearing, the  
18 superintendent Insurance Commission determines that  
19 the failure to furnish the information was without  
20 good cause, he it shall issue an order for disapprov-  
21 al of the filing.

22            **9. Public hearing.** The superintendent Insurance  
23 Commission shall hold a public hearing, as provided  
24 in Title 24-A, sections 229 276 and 235 282, on each  
25 filing. The public hearing shall be conducted not  
26 sooner than 30 days and not later than 120 days of  
27 the receipt of the rate filing by the Bureau of In-  
28 surance, unless he the commission extends these lim-  
29 its under subsection 5. The superintendent Insur-  
30 ance Commission shall approve or disapprove that fil-  
31 ing and state his its findings in a written order is-  
32 sued within 180 days from the receipt of the filings  
33 by the bureau, unless he it extends this limit under  
34 subsection 5. If the superintendent Insurance  
35 Commission denies a filing, any further filing shall  
36 be deemed to be a new filing, subject to this public  
37 hearing requirement.

38            **11. Procedures; rules.** Subject to the applica-  
39 ble requirements of the Maine Administrative Proce-  
40 dure Act, Title 5, chapter 375, the superintendent  
41 Insurance Commission may adopt rules establishing  
42 procedures for the administration of this section,  
43 including, but not limited to, procedures governing  
44 submission of petitions for intervenor status,

1 prefiling of testimony and exhibits, information re-  
2 quests, subpoenas, prehearing conferences and conduct  
3 of hearings.

4 12. Costs. For the purpose of determining  
5 whether the filing meets the requirements of this  
6 section, the superintendent Insurance Commission may  
7 employ staff personnel and outside consultants. The  
8 reasonable costs related to the review of workers'  
9 compensation rate filings, including conduct of the  
10 hearing, shall be borne by the rating organizations  
11 or insurers making the filing.

12 **Sec. 35.** 39 MRSA §22-D, first ¶, as enacted by  
13 PL 1985, c. 372, Pt. B, §8, is amended to read:

14 The following provisions apply to determination  
15 of insurance policies and rates by the Superintendent  
16 of Insurance Commission as provided in Title 24-A,  
17 chapter 25, subchapter II.

18 **Sec. 36.** 39 MRSA §22-D, sub-§§1, 2 and 3, as en-  
19 acted by PL 1985, c. 372, Pt. B, §8, are amended to  
20 read:

21 1. Policies. Every insurance company issuing  
22 workers' compensation insurance policies covering the  
23 payment of compensation and benefits provided for in  
24 this Act shall file with the Superintendent-of Insur-  
25 ance Commission:

26 A. A copy of the form of the policies. A policy  
27 may not be issued until the superintendent Insur-  
28 ance Commission has approved the form;

29 B. Its classification of risks and their premium  
30 rates and any subsequent proposed classifications  
31 and premium rates; and

32 C. Any premium rates less than those approved  
33 which may be used.

34 Premium rates for insurance issued in the residual  
35 market shall not take effect until established by the  
36 superintendent Insurance Commission. All other pre-  
37 mium rates shall take effect as provided in Title  
38 24-A, chapter 25, subchapter II.

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

5           A. He It may require the filing of specific  
6 rates for workers' compensation insurance, in-  
7 cluding classifications of risks, experience or  
8 any other rating information from insurance com-  
9 panies authorized to transact insurance in this  
10 State.

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

15           C. He It may at any time, after public hearing,  
16 withdraw his its approval of a previously ap-  
17 proved rate filing.

18           3. Notice of filing. At least 45 days prior to  
19 any filing for rates under this section, a filer  
20 shall notify the superintendent Insurance Commission  
21 in writing of its intention to file and shall dis-  
22 close the approximate amount of a requested increase  
23 or decrease and a description of major rating rule  
24 changes to be proposed. Within 10 days of receipt,  
25 the superintendent Insurance Commission shall notify  
26 the public by publication in the state paper and no-  
27 tify the Public Advocate that a rate filing is to be  
28 made.

29           **Sec. 37. 39 MRSA §22-D, sub-§4, ¶¶D and E, as**  
30 **enacted by PL 1985, c. 372, Pt. B, §8, are amended to**  
31 **read:**

32           D. Statements or exhibits that reasonably sub-  
33 stantiate assumptions, methodology or calcula-  
34 tions used in support of the proposed rates or to  
35 generate the information or data in the filing  
36 and identification of any of those that are known  
37 or believed to be contrary to established policy  
38 of the superintendent Insurance Commission; and

39           E. Any other information required to be included  
40 by the superintendent Insurance Commission.

1       Sec. 38. 39 MRSA §22-D, sub-§5, ¶A, as enacted  
2 by PL 1985, c. 372, Pt. B, sub-§8, is amended to  
3 read:

4       A. To the extent that the Maine expense and ex-  
5 perience data is not fully creditable, the  
6 superintendent Insurance Commission may allow re-  
7 porting of and consider data from outside this  
8 State.

9       Sec. 39. 39 MRSA §22-D, sub-§§6, 7, 9, 10, 12  
10 and 13, as enacted by PL 1985, c. 372, Pt. B, §8, are  
11 amended to read:

12       6. Additional information. The superintendent  
13 Insurance Commission may require, at any time, any  
14 additional information he it deems necessary and may  
15 reasonably extend the time periods established in  
16 subsection 9 to allow time to provide that informa-  
17 tion.

18       A. Within 30 days of receipt of a filing, the  
19 superintendent Insurance Commission shall deter-  
20 mine if the filing is complete.

21           (1) If the filing is incomplete, the  
22 superintendent Insurance Commission shall  
23 notify the applicant and all parties in  
24 writing of those deficiencies.

25           (2) An applicant shall complete or amend  
26 the filing within 30 days of that written  
27 notice.

28           (3) An action or inaction by the  
29 superintendent Insurance Commission under  
30 this paragraph does not constitute a sub-  
31 stantive finding that the information in the  
32 filing is sufficient to establish that any  
33 action or relief should be granted or that  
34 any facts have been proven or limit the  
35 superintendent's Insurance Commission's au-  
36 thority to request further information or  
37 data.

38       B. If the applicant fails to furnish the infor-  
39 mation within the time prescribed, the

1            superintendent Insurance Commission may issue an  
2 order dismissing the filing.

3            C. For all purposes, the date of completing the  
4 filing shall be deemed the date on which the last  
5 document that made the filing complete was re-  
6 ceived by the superintendent Insurance  
7 Commission, except that the superintendent Insur-  
8 ance Commission may treat the day that the incom-  
9 plete filing was filed as the filing date if the  
10 incompleteness is found to be immaterial or not  
11 to have delayed, impeded or interfered with the  
12 ability of the bureau or any party to respond to,  
13 investigate or process the filing.

14            7. Standard for approval. This subsection ap-  
15 plies to determination of just and reasonable rates  
16 for a filing.

17            A. The superintendent Insurance Commission shall  
18 establish rates, based on the filing and sworn  
19 testimony, which are, in addition to any other  
20 requirements:

21                    (1) Just and reasonable and not excessive,  
22 inadequate or unfairly discriminatory;

23                    (2) Based only on a just and reasonable  
24 profit; and

25                    (3) Based on reported loss reserves, in-  
26 cluding the discount rates applied to those  
27 reserves, that do not result in rates that  
28 are excessive, inadequate or unfairly dis-  
29 criminatory.

30            B. In establishing just and reasonable rates,  
31 the superintendent Insurance Commission shall  
32 consider:

33                    (1) The reasonableness of any return on  
34 capital and surplus allocable to the cover-  
35 age of risks in this State;

36                    (2) The reasonableness of the amounts of  
37 capital and surplus allocable to the cover-  
38 age of risks in this State;



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

4 (4) The reported loss reserves, including  
5 the methods and the interest rates used in  
6 determining the present value for reported  
7 reserves;

8 (5) The reported annual losses and loss ad-  
9 justment expenses;

10 (6) The measures taken to contain costs,  
11 including loss control, loss adjustment and  
12 employee safety engineering programs;

13 (7) The relationship of the aggregate  
14 amount of operating expenses reported by all  
15 companies to the annual operating expenses  
16 reported in the filing and the annual insur-  
17 ance expense exhibits filed by each company  
18 with the bureau; and

19 (8) The operating and management efficiency  
20 of the companies.

21 C. The justness and reasonableness of rates  
22 shall be determined for the period in which the  
23 rates are in effect.

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

27 E. The superintendent Insurance Commission may  
28 not approve an increase or decrease in rates un-  
29 less he finds that the information supplied in  
30 the filing and sworn testimony is accurate and  
31 sufficient to meet the requirements of this sec-  
32 tion.

33 F. For the introduction of a new rate for a new  
34 classification or the adjustment of a single rate  
35 for an existing classification, the requirements  
36 of paragraph A, subparagraph (1); subsection 2;  
37 subsection 4, paragraphs B to E; and subsections  
38 8, 9, 10, 12 and 13 shall apply. The

1 superintendent Insurance Commission shall estab-  
2 lish the new rate at a level which is not unfair-  
3 ly discriminatory in relation to the currently  
4 approved rates for other classifications.

5 9. Information for parties and intervenors. A  
6 party or intervenor may make written application to  
7 the superintendent Insurance Commission for an order  
8 that a filer produce any information relevant to  
9 whether the filing rates meet the requirements of  
10 this section and Title 24-A, except for information  
11 relating to a particular claim. If the filer fails to  
12 furnish the information within the time prescribed by  
13 the superintendent Insurance Commission, the party or  
14 intervenor making the request may make written appli-  
15 cation to the superintendent Insurance Commission for  
16 an order dismissing the filing. If, after a hearing,  
17 the superintendent Insurance Commission determines  
18 that the failure to furnish the information was with-  
19 out good cause, he it shall issue an order for dis-  
20 missal of the filing.

21 10. Public hearing. The superintendent Insur-  
22 ance Commission shall hold a public hearing, as pro-  
23 vided in Title 24-A, sections 229 276 and 235 282, on  
24 each filing. The public hearing shall be conducted no  
25 sooner than 30 days and no later than 120 days of the  
26 date the rate filing is deemed complete by the  
27 superintendent Insurance Commission, unless the  
28 superintendent Insurance Commission extends these  
29 limits under subsection 6. The superintendent Insur-  
30 ance Commission shall establish just and reasonable  
31 rates and state his its findings in a written order  
32 issued within 180 days from the date the filing is  
33 completed, unless he it extends this limit under sub-  
34 section 6. If the superintendent Insurance Commission  
35 denies or dismisses a filing, any further filing  
36 shall be deemed to be a new filing, subject to this  
37 public hearing requirement.

38 12. Procedure; rules. Subject to the applicable  
39 requirements of the Maine Administrative Procedure  
40 Act, Title 5, chapter 375, the superintendent Insur-  
41 ance Commission may adopt rules establishing proce-  
42 dures for the administration of this section, includ-  
43 ing, but not limited to, procedures governing submis-  
44 sion of petitions for intervenor status, prefiling of

1 testimony and exhibits, information requests, subpoe-  
2 nas, prehearing conferences and conduct of hearings.

3 13. Costs. For the purpose of determining  
4 whether a filing meets the requirements of this sec-  
5 tion, the superintendent Insurance Commission may em-  
6 ploy staff personnel and outside consultants. The  
7 reasonable costs related to the review of workers'  
8 compensation rate filings, including conduct of the  
9 hearing, shall be borne by the advisory organization  
10 or insurer making the filing.

11 **Sec. 40.** 39 MRSA §22-E is enacted to read:

12 §22-E. Premium discounts for small employers

13 An employer in this State whose annual payroll  
14 does not exceed \$200,000, and whose incurred losses  
15 for the previous 3 years of coverage for which sta-  
16 tistics are available have not exceeded 60% of earned  
17 premium for that period, shall be entitled to a pre-  
18 mium discount of not less than 8% on his current an-  
19 ual premium.

20 The premium discounts provided in this section  
21 may not be recovered by any rating organization or  
22 insurer in the rate base, premiums or in any rate  
23 filing under section 22 or by modification of the  
24 rating or discount plans applicable to employers who  
25 are not subject to this section.

26 The Insurance Commission shall adopt rules to ad-  
27 minister this section, including, but not limited to,  
28 rules for the review and administrative appeal of  
29 grievances of insureds, applicants and insurers under  
30 this section.

31 The incurred losses of an employer mentioned in  
32 this section shall be the sum of the paid claims  
33 originating in the 3-year period and the reserves for  
34 claims originating in and outstanding at the end of  
35 the indicated 3-year period. No further adjustment  
36 may be made.

37 **Sec. 41.** 39 MRSA §23, sub-§1, as amended by PL  
38 1977, c. 696, §399, is further amended to read:

1           1. Insuring under workers' compensation insurance  
2 policy. By insuring and keeping insured the pay-  
3 ment of such compensation and other benefits under an  
4 a workers' compensation insurance policy. The insur-  
5 ance company shall file with the commission Workers'  
6 Compensation Commission notice, in such form as the  
7 commission it approves, of the issuance of any work-  
8 ers' compensation policy to an employer. Such insur-  
9 ance shall not be cancelled within the time limited  
10 in such policy for its expiration until at least 30  
11 days after mailing to the commission Workers' Compensa-  
12 sation Commission and to the employer a notice of the  
13 cancellation of such insurance. In the event that the  
14 employer has obtained an a workers' compensation poli-  
15 cy from another insurance company, or has otherwise  
16 secured compensation as provided in this section, and  
17 such insurance or other security becomes effective  
18 prior to the expiration of said 30 days, cancellation  
19 shall be effective as of the effective date of such  
20 other insurance or receipt of security-;

21           **Sec. 42. 39 MRSA §23, sub-§2, as amended by PL**  
22 **1985, c. 779, §85, is further amended to read:**

23           2. Proof of solvency and financial ability. By  
24 furnishing satisfactory proof to the Superintendent  
25 of Insurance Commission of his solvency and financial  
26 ability to pay the compensation and benefits, and de-  
27 posit cash, satisfactory securities or a security  
28 bond, with the Workers' Compensation Commission, in  
29 such sum as the superintendent Insurance Commission  
30 may determine pursuant to subsection 6; such bond to  
31 run to the Treasurer of State and his successor in  
32 office, and to be conditional upon the faithful per-  
33 formance of this Act relating to the payment of com-  
34 pensation and benefits to any injured employee. In  
35 case of cash being deposited, it shall be placed at  
36 interest by the Treasurer of State, and the accumula-  
37 tion of interest on said cash or securities so depos-  
38 ited shall be paid to the employer depositing the  
39 same. The superintendent Insurance Commission may at  
40 any time, upon not less than 3 days notice and fol-  
41 lowing hearing, for cause deny to an employer the  
42 right to continue in the exercise of the option  
43 granted by this section.

1 As an alternative to the method described in the  
2 first paragraph of this subsection, an eligible em-  
3 ployer may establish an actuarially funded trust,  
4 funded at a level sufficient to discharge those obli-  
5 gations incurred by the employer pursuant to this Act  
6 as they become due and payable from time to time,  
7 provided that the value of trust assets shall be at  
8 least equal to the present value of such incurred  
9 claims. The trust asset shall consist of cash or  
10 marketable securities of a type and risk character as  
11 specified in subsection 7, and shall have a situs in  
12 the United States. In all other respects, the trust  
13 instrument, including terms for certification, fund-  
14 ing, designation of trustee and pay out shall be as  
15 approved by the superintendent Insurance Commission;  
16 provided, that the value of the trust account shall  
17 be actuarially calculated at least annually and ad-  
18 justed to the required level of funding. For pur-  
19 poses of this paragraph, an "eligible employer" is  
20 one who is found by the superintendent Insurance  
21 Commission to be capable of paying compensation and  
22 benefits required by this Act and:

23 A. Has positive net earnings; or

24 B. Can demonstrate a level of working capital  
25 adequate to its operating needs.

26 Notwithstanding any provision of this section or  
27 chapter, any bond or security deposit required of a  
28 public employer which is a self-insurer shall not ex-  
29 ceed \$50,000, provided that such public employer has  
30 a net worth equal to or in excess of \$25,000,000 and  
31 a state-assessed valuation equal to or in excess of  
32 \$300,000,000. "Public employer" includes the State,  
33 the University of Maine System, counties, cities and  
34 towns.

35 In ~~his~~ its consideration of a self-insuring entity's  
36 application for authorization to operate a plan of  
37 self-insurance, the superintendent Insurance  
38 Commission may require or permit an applicant to em-  
39 ploy valid risk transfer by the utilization of pri-  
40 mary excess insurance. Standards respecting the ap-  
41 plication of primary excess insurance shall be con-  
42 tained in a regulation promulgated by the  
43 superintendent Insurance Commission pursuant to the

1 Maine Administrative Procedure Act, Title 5, chapter  
2 375. Primary excess insurance shall be defined as in-  
3 surance covering workers' compensation exposures in  
4 excess of risk retained by a self-insurer-;

5 Sec. 43. 39 MRSA §23, sub-§2-A, as amended by PL  
6 1983, c. 668, §2, is further amended to read:

7 2-A. Group self-insurers; application. Except  
8 for the provision relating to individual public em-  
9 ployer self-insurers, subsection 2 shall be equally  
10 applicable in all respects to group self-insurers.  
11 Any employer or group of employers desiring to become  
12 a self-insurer shall submit to the Superintendent of  
13 Insurance Commission with an application for self-  
14 insurance, in a form prescribed by the superintendent  
15 Insurance Commission the following:

16 A. A payroll report for each participating em-  
17 ployer of the group for 3 preceding annual fiscal  
18 periods;

19 B. A report of compensation losses incurred,  
20 payments plus reserves, by each participating em-  
21 ployer of the group for the corresponding 3 annu-  
22 al periods;

23 C. A sworn itemized statement of the group's as-  
24 sets and liabilities; satisfactory proof of fi-  
25 nancial ability to pay compensation for the em-  
26 ployers participating in the group plan; the  
27 group's reserves, their source and assurance of  
28 continuance;

29 D. A description of the safety organization  
30 maintained by the employer or group for the pre-  
31 vention of injuries;

32 E. A statement showing the kind of operations  
33 performed or to be performed; and

34 F. Any and all agreements, contracts or other  
35 pertinent documents relating to the organization  
36 of the employers in the group.

37 If, upon examination of the sworn financial statement  
38 and other data submitted, the superintendent Insur-

1 ance Commission is satisfied as to the ability of the  
2 employer or group to make current compensation pay-  
3 ments and that the employer's or group's tangible as-  
4 sets make reasonably certain the payment of all obli-  
5 gations that may arise under the Workers' Compensation  
6 Law Act, the application shall be granted sub-  
7 ject to the terms and conditions setting out the ex-  
8 posure of cash deposits or securities or an accept-  
9 able surety bond, all as required by the  
10 superintendent Insurance Commission. Security against  
11 shock or catastrophe loss shall be provided either by  
12 depositing securities with the Workers' Compensation  
13 Commission in such amount as the superintendent In-  
14 urance Commission may determine, or by filing with  
15 the superintendent Insurance Commission and the Work-  
16 ers' Compensation Commission an insurance carrier's  
17 certificate of a standard self-insurer's primary ex-  
18 cess contract issued to the self-insurer or group in  
19 form approved by the superintendent Insurance  
20 Commission, providing coverage against losses arising  
21 out of one injury in such amounts as the  
22 superintendent Insurance Commission may determine, or  
23 a combination of the foregoing, satisfactory to the  
24 superintendent Insurance Commission. Notwithstanding  
25 any provision of this section or chapter, no specific  
26 or aggregate excess insurance shall may be required  
27 of any individual public employer who is self-insured  
28 and has a net worth equal to or in excess of  
29 \$25,000,000 and a state-assessed valuation equal to  
30 or in excess of \$300,000,000.

31 Yearly reports in a form prescribed by the  
32 superintendent Insurance Commission shall be filed by  
33 each self-insurer or group. The superintendent In-  
34 urance Commission may, in addition, require the fil-  
35 ing of quarterly financial status reports whenever he  
36 it has reason to believe that there has been a dete-  
37 rioration in the financial condition of either an in-  
38 dividual or group self-insurer which adversely af-  
39 fects the individual's or group's ability to pay ex-  
40 pected losses. Said The reports shall be filed with-  
41 in 30 days after the superintendent's Insurance  
42 Commission's request, or at such time as the  
43 superintendent it shall otherwise set.

44 After approving any application for self-insurance,  
45 the superintendent Insurance Commission shall prompt-

1 ly notify the Workers' Compensation Commission and  
2 forward to it copies of the application and all sup-  
3 porting materials;

4 **Sec. 44. 39 MRSA §23, sub-§4, ¶B**, as amended by  
5 PL 1979, c. 577, §4, is further amended to read:

6 B. Any group of employers may adopt a plan for  
7 self-insurance, as a group, for the payment of  
8 compensation under this chapter to their employ-  
9 ees. Under such plan the group shall assume the  
10 liability of all the employers within the group  
11 and pay all compensation for which the ~~said~~ em-  
12 ployers are liable under this chapter. Where such  
13 plan is adopted, the group shall furnish satis-  
14 factory proof to the superintendent Insurance  
15 Commission of its financial ability to pay such  
16 compensation for the employers in the group, its  
17 revenues, their source and assurance of continu-  
18 ance. The superintendent Insurance Commission  
19 shall require the deposit with the Workers' Com-  
20 pensation Commission of such securities as may be  
21 deemed necessary of the kind prescribed in para-  
22 graphs A C to E or the filing of a bond of a  
23 surety company authorized to transact business in  
24 this State, in an amount to be determined to se-  
25 cure its liability to pay the compensation of  
26 each employer as above provided in accordance  
27 with paragraph E. Such surety bond must be ap-  
28 proved as to form by the superintendent Insurance  
29 Commission. The superintendent Insurance  
30 Commission may also require that any and all  
31 agreements, contracts and other pertinent docu-  
32 ments relating to the organization of the employ-  
33 ers in the group shall be filed with ~~him~~ it at  
34 the time the application for group self-insurance  
35 is made. Such application shall be on a form pre-  
36 scribed by the superintendent Insurance  
37 Commission. The superintendent Insurance  
38 Commission shall have the authority to deny the  
39 application of the group to pay such compensation  
40 or to revoke ~~his~~ its consent furnished under this  
41 section at any time for good cause shown. The  
42 group qualifying under this paragraph shall be  
43 known as a self-insurer.

44 **Sec. 45. 39 MRSA §23, sub-§4, ¶C**, as amended by  
45 PL 1983, c. 303, is further amended to read:



1 C. An employer participating in group self-  
2 insurance shall not be relieved from the liability  
3 for compensation prescribed by this chapter,  
4 except by the payment thereof by the group self-  
5 insurer or by himself. As between the employee  
6 and the group self-insurer, notice to or knowl-  
7 edge of the occurrence of the injury on the part  
8 of the employer shall be deemed notice or knowl-  
9 edge, as the case may be, on the part of the  
10 group self-insurer; jurisdiction of the employer  
11 shall, for the purpose of this chapter, be juris-  
12 diction of the group self-insurer and the group  
13 self-insurer shall in all things be bound by and  
14 subject to the orders, findings, decisions or  
15 awards rendered against the participating employ-  
16 er for the payment of compensation under this  
17 chapter. The insolvency or bankruptcy of a par-  
18 ticipating employer shall not relieve the group  
19 self-insurer from the payment of compensation for  
20 injuries or death sustained by an employee during  
21 the time the employer was a participant in the  
22 group self-insurance. The group self-insurer  
23 shall promptly notify the superintendent Insur-  
24 ance Commission and the Workers' Compensation  
25 Commission, on a prescribed form, of the addition  
26 of any participating employer or employers. The  
27 approval of the Superintendent--of Insurance  
28 Commission shall not be necessary in order to add  
29 participating employers to the group self-  
30 insurer. Notice of termination of a participa-  
31 ting employer shall not be effective until at  
32 least 10 days after notice of that termination,  
33 on a prescribed form, has been either filed in  
34 the office of the superintendent Insurance  
35 Commission and the Workers' Compensation Commis-  
36 sion or sent by registered mail. The group self-  
37 insurer shall give notice of the termination of  
38 any participating member to all other participa-  
39 ting members at least quarterly each year. Writ-  
40 ten notice shall be given to any new participa-  
41 ting member at the time of admission that the  
42 specific membership of the group and its members  
43 as prescribed in this section shall not be af-  
44 fected by the group's failure to provide its mem-  
45 bers with prior or immediate notice of changes in  
46 the membership of the group if notice is given at  
47 least quarterly, provided that the termination or

1 admission of members was effected in compliance  
2 with all group agreements and bylaws and in com-  
3 pliance with this section and the rules adopted  
4 thereunder.

5 Sec. 46. 39 MRSA §23, sub-§4, ¶D, as amended by  
6 PL 1979, c. 577, §6, is further amended to read:

7 D. Each group self-insurer, in its application  
8 for self-insurance, shall set forth the names and  
9 addresses of each of its officers, directors,  
10 trustees and general manager. Notice of any  
11 change in the officers, directors, trustees or  
12 general manager shall be given to the  
13 superintendent Insurance Commission and the Work-  
14 ers' Compensation Commission within 10 days  
15 thereof. No officer, director, trustee or employ-  
16 ee of the group self-insurer may represent or  
17 participate directly or indirectly on behalf of  
18 an injured worker or his dependents in any work-  
19 ers' compensation proceeding. All employees of  
20 employers participating in group self-insurance  
21 shall be and are deemed to be included under the  
22 group self-insurance plan.

23 Sec. 47. 39 MRSA §23, sub-§4, ¶E, as amended by  
24 PL 1979, c. 577, §7, is further amended to read:

25 E. If for any reason, the status of a group  
26 self-insurer under this paragraph is terminated,  
27 the securities or the surety bond on deposit re-  
28 ferred to herein shall remain in the custody of  
29 the Workers' Compensation Commission for a period  
30 of at least 26 months. At the expiration of such  
31 time or such further period as the superintendent  
32 Insurance Commission may deem proper and war-  
33 ranted, ~~he~~ it may accept in lieu thereof, and for  
34 the additional purpose of securing such further  
35 and future contingent liability as may arise from  
36 prior injuries to workers and be incurred by rea-  
37 son of any change in the condition of such work-  
38 ers warranting the board making subsequent awards  
39 for payment of additional compensation, a policy  
40 of insurance furnished by the group self-insurer,  
41 its successor or assigns or other carrying on or  
42 liquidating such self-insurance group. Such poli-  
43 cy shall be in a form approved by the Superin-

1           tendent-of Insurance Commission and issued by the  
2           state fund or any insurance company licensed to  
3           issue this class of insurance in this State. It  
4           shall only be issued for a single complete premi-  
5           um payment in advance by the group self-insurer.  
6           It shall be given in an amount to be determined  
7           by the superintendent Insurance Commission and  
8           when issued shall be noncancellable for any cause  
9           during the continuance of the liability secured  
10          and so covered.

11          **Sec. 48.** 39 MRSA §23, sub-§4, ¶F, as repealed  
12          and replaced by PL 1979, c. 577, §8, is amended to  
13          read:

14          F. The Superintendent--of Insurance Commission  
15          may provide for the administration of this sec-  
16          tion relating to self-insurance in the manner  
17          prescribed in Title 24-A, section ~~212~~ 258.

18          **Sec. 49.** 39 MRSA §23, sub-§4, ¶¶K and L, as en-  
19          acted by PL 1979, c. 658, §5, are amended to read:

20          K. Special study of the Superintendent-of Insur-  
21          ance Commission.

22                 (1) The Superintendent----of Insurance  
23                 Commission is directed to conduct a study to  
24                 determine the effect of group self-insurers  
25                 authorized pursuant to this chapter upon the  
26                 workers' compensation insurance plan. The  
27                 superintendent Insurance Commission is di-  
28                 rected to form a special committee to assist  
29                 in this study.

30                 (2) The special committee shall consist of  
31                 2 members representing each of the following  
32                 groups who shall be appointed by the  
33                 superintendent Insurance Commission:

- 34                         (a) Workers' compensation insurers;
- 35                         (b) Group self-insurers;
- 36                         (c) Labor; and
- 37                         (d) The public.

1 (3) The study may not commence until 2  
2 years following initial authorization of a  
3 group self-insurer pursuant to this chapter.

4 (4) Each insurer and group self-insurer  
5 providing workers' compensation coverage  
6 during the calendar year in which the study  
7 commences shall be assessed a fee not to ex-  
8 ceed \$100. These assessments shall be used  
9 for the purpose of conducting the study.

10 (5) Following completion of the study, the  
11 superintendent Insurance Commission shall  
12 report to the Governor and the Legislature.  
13 The report shall contain his its findings as  
14 to the impact of group self-insurance on the  
15 workers' compensation insurance plan and his  
16 its recommendations for additional legisla-  
17 tion.

18 L. Annual examinations of each group self-  
19 insurer, as required by the superintendent Insur-  
20 ance Commission, shall be performed by public ac-  
21 countants acceptable to the superintendent Insur-  
22 ance Commission and reports rendered to the  
23 superintendent Insurance Commission within a rea-  
24 sonable period, as determined by the  
25 superintendent Insurance Commission subsequent to  
26 the group self-insurers elected fiscal year. The  
27 examinations shall be conducted pursuant to gen-  
28 erally accepted accounting principles, as they  
29 are consistent with precepts prescribed by the  
30 superintendent Insurance Commission, which place  
31 sound values on assets and liabilities of group  
32 self-insurers. Other examinations of the affairs,  
33 transactions, accounts, records and assets of  
34 each group self-insurer and of any person as to  
35 any matter relevant to the financial affairs of  
36 the group self-insurer shall be conducted as of-  
37 ten as the superintendent Insurance Commission  
38 deems advisable. The expense of examination of a  
39 group self-insurer shall be borne by the person  
40 examined.

41 **Sec. 50. 39 MRSA §23, sub-§4, ¶¶M, N and O, as**  
42 **enacted by PL 1985, c. 219, are amended to read:**

1 M. In any fiscal year, no group self-insurer may  
2 be required to obtain aggregate excess insurance  
3 with a policy limit that exceeds a multiple of  
4 1.5 of its annual standard workers' compensation  
5 premium for that fiscal year. The superintendent  
6 Insurance Commission may set lower policy limits  
7 for aggregate excess insurance where, in his its  
8 judgment, lower limits may be prudent.

9 N. Upon approval by the superintendent Insurance  
10 Commission, a group self-insurer may dedicate a  
11 portion of its unimpaired surplus to increase its  
12 self-insured retention level under the aggregate  
13 excess insurance policy by an amount equal to the  
14 amount of surplus so dedicated. The  
15 superintendent Insurance Commission before grant-  
16 ing his its approval shall consider among other  
17 factors:

18 (1) The level of alternate revenues availa-  
19 ble to the group self-insurer to cover the  
20 further assumed costs; and

21 (2) The adequacy of the fund's surplus to  
22 meet obligations of the group self-insurer.

23 At the expiration of a period of 10 calendar days  
24 after the superintendent Insurance Commission has  
25 received a plan for the dedication of a portion  
26 of the unimpaired surplus of a group self-insurer  
27 to increase its self-insured retention level and  
28 any additional information the superintendent In-  
29 urance Commission has deemed necessary, the plan  
30 shall be deemed approved unless prior to the ex-  
31 piration of that time period it has been affirma-  
32 tively approved or disapproved by the  
33 superintendent Insurance Commission.

34 O. In addition, upon the filing of a plan which  
35 meets the approval of the superintendent Insur-  
36 ance Commission, group self-insurers may be au-  
37 thorized to issue subordinated loan certificates,  
38 the proceeds of which shall be made part of the  
39 group self-insurer's surplus account and availa-  
40 ble as other surplus funds for dedication to in-  
41 crease the self-insured retention level. To the  
42 extent that the proceeds of these loan certifi-

1 cates are utilized by a group self-insurer to in-  
2 crease its self-insured retention in any fiscal  
3 year, the aggregate proceeds of the loan certifi-  
4 cates so utilized shall in no event exceed 25% of  
5 the annual standard premium for that fiscal year.  
6 The obligation to redeem these loan certificates  
7 after the proceeds of the loan certificates have  
8 been dedicated to increase the aggregate excess  
9 self-insured retention level of the group self-  
10 insurer shall be subordinate to covered claims  
11 and shall not be redeemed after the dedication  
12 without the approval of the superintendent Insur-  
13 ance Commission;

14 Sec. 51. 39 MRSA §23, sub-§§6, 7, 8 and 9, as  
15 enacted by PL 1981, c. 484, §7, are amended to read:

16 6. Security deposit and excess insurance re-  
17 quirements for individual self-insurers. The follow-  
18 ing security deposit and excess insurance require-  
19 ments apply to individual self-insurers.

20 A. The bond or security deposit required of an  
21 individual self-insurer shall not be less than  
22 the greater of an amount determined by the fol-  
23 lowing formula or \$50,000. The bond or security  
24 deposit shall be the greater of an amount equal  
25 to the loss and loss adjustment expense portion  
26 of the annual standard premium for the prospec-  
27 tive fiscal coverage period or outstanding loss  
28 reserves minus recoveries from all excess carri-  
29 ers and subrogation reduced to net collections  
30 plus 25% of annual standard premiums for the pro-  
31 spective fiscal coverage period. The percentage  
32 factor used to determine the portion of standard  
33 annual premium allocated for loss and loss ad-  
34 justment expenses shall be acceptable to the  
35 superintendent Insurance Commission.

36 For individual self-insurers who have a net worth  
37 equal to or in excess of \$10,000,000; who have  
38 had positive net earnings demonstrated by certi-  
39 fied statements of financial condition in at  
40 least 3 of the 5 latest fiscal years, including  
41 therein one of the 2 most recent years; and whose  
42 mean annual earnings for the 5 latest fiscal  
43 years are at least equal to the normal annual

1 premium for the prospective fiscal coverage peri-  
2 od, the minimum security deposit or bond shall be  
3 an amount determined by the formula above or as  
4 hereinafter adjusted for applicable levels of  
5 working capital funds.

6 An employer meeting the above test may deduct  
7 from the penal value of its surety bond or from  
8 market value of securities deposited, an amount  
9 not exceeding demonstrated working capital in  
10 such current statement of financial condition;  
11 the bond or deposit shall not be less than  
12 \$100,000.

13 For those self-insurers unable to meet the fore-  
14 going standards, the security deposit shall be  
15 governed by this subsection. Self-insurers fail-  
16 ing these tests shall deposit acceptable funds or  
17 a surety bond in that amount produced by the for-  
18 mula to be written by a corporate surety which  
19 meets the qualifications prescribed by regula-  
20 tions of the superintendent Insurance Commission.

21 Within 30 days after notice by the Superintendent  
22 of Insurance Commission, the self-insurer shall  
23 post the deposit indicated. This deadline may be  
24 extended by the superintendent Insurance  
25 Commission for good cause, but in no event may  
26 exceed one year from the deadline for compliance  
27 as stated in the notice given to the self-  
28 insurer.

29 A bond or security deposit in excess of the  
30 amount prescribed by this subsection may be re-  
31 quired if the superintendent Insurance Commission  
32 determines that the self-insurer has experienced  
33 a deterioration in financial condition which ad-  
34 versely affects the self-insurer's ability to pay  
35 expected losses.

36 No judgment creditor other than claimants for  
37 benefits under this Act may have a right to levy  
38 upon the self-insurer's assets held in such de-  
39 posit.

40 B. All individual self-insurers shall maintain  
41 specific excess insurance unless the

1            superintendent Insurance Commission, in ~~his~~ its  
2            discretion, waives such a requirement. Specific  
3            excess insurance shall generally have a limit of  
4            at least \$2,000,000. Higher limits may be re-  
5            quired for those businesses with a high risk of  
6            multiple injury from a single occurrence. The re-  
7            tention underlying specific excess policies shall  
8            be the lowest retention generally available for  
9            businesses of similar size and exposure, but may,  
10           at the superintendent's Insurance Commission's  
11           discretion, be established at higher levels con-  
12           sistent with the employer's claims experience and  
13           financial condition.

14           All individual self-insurers shall maintain ag-  
15           gregate excess insurance unless the  
16           superintendent Insurance Commission, in ~~his~~ its  
17           discretion, waives such requirements;

18           7. Acceptable deposit funds or surety bonds. In  
19           addition to cash, the deposit funds acceptable to the  
20           superintendent Insurance Commission as a security de-  
21           posit shall include United States Government bonds,  
22           notes or bills, issued or guaranteed by the United  
23           States of America; bonds secured by the full faith,  
24           credit and taxing power of political subdivisions of  
25           the United States rated in the 3 highest grades by a  
26           national rating agency such as Moody's, Standard and  
27           Poor's, Fitch, as of the foregoing year end; money  
28           market funds which are invested only in United States  
29           Government or government agency obligations with a  
30           maturity of one year or less; high grade commercial  
31           paper rated as either A1 or P1 by a national rating  
32           agency; certificates of deposit issued by a duly  
33           chartered commercial bank or thrift institution in  
34           the State which are protected by the Federal Deposit  
35           Insurance corporation; savings certificates issued by  
36           any savings and loan association in the State which  
37           are protected by the Federal Savings and Loan Insur-  
38           ance Corporation, and surety bonds in a form pre-  
39           scribed by the superintendent Insurance Commission  
40           which are issued by any corporate surety which meets  
41           the qualifications prescribed by regulation of the  
42           superintendent Insurance Commission, and such other  
43           investments approved by the superintendent Insurance  
44           Commission;



1           8. Qualifications for excess carriers. No work-  
2 ers' compensation contract or policy issued after the  
3 ~~effective-date-of-this-section~~ September 18, 1981 may  
4 be recognized by the superintendent Insurance  
5 Commission in considering the ability of an individu-  
6 al or group self-insurer to fulfill its financial ob-  
7 ligations under this Act, unless the contract or pol-  
8 icy is issued by an admitted insurance company or by  
9 an approved alien unincorporated insurer or other  
10 subsequently approved insurance exchange possessed of  
11 similar capitalization, deposit funds and underwrit-  
12 ing capabilities which meets the minimum qualifica-  
13 tions prescribed in Title 24-A and regulations apper-  
14 taining to admission or eligibility requirements;

15           9. Revocation or termination of the self-  
16 insurance privilege. The following may constitute  
17 grounds for denial of the right of any individual or  
18 group to continue the option of self-insurance:

19           A. Failure to comply with regulations adopted by  
20 the superintendent Insurance Commission or any  
21 provisions of this Act within 14 days or such  
22 other time as may be established by order of the  
23 superintendent Insurance Commission of notice of  
24 such failure;

25           B. Failure to comply with any lawful order of  
26 the superintendent Insurance Commission;

27           C. Repeated failure to comply with regulations  
28 of the superintendent Insurance Commission or any  
29 provisions of this Act;

30           D. Committing an unfair or deceptive act or  
31 practice as defined in Title 24-A, sections 2151  
32 to 2167;

33           E. Deterioration of financial condition adverse-  
34 ly affecting the self-insurer's ability to pay  
35 expected losses; or

36           F. Failure to pay any lawful assessment of the  
37 Maine Self-Insurance Guarantee Association.

38 Notwithstanding Title 5, section 10051, the  
39 superintendent Insurance Commission is expressly

1 granted the authority to revoke or suspend the right  
2 of an individual or group to continue the option to  
3 self-insure after a hearing held in accordance with  
4 Title 5, chapter 375, subchapter IV and Title 24-A,  
5 chapter 3- 3-A;

6 **Sec. 52. 39 MRSA §23, sub-§10,** as repealed and  
7 replaced by PL 1983, c. 132, is amended to read:

8 10. Confidentiality of information. All writ-  
9 ten, printed or graphic matter or any mechanical or  
10 electronic data compilation from which information  
11 can be obtained, directly or after translation into a  
12 form susceptible of visual or aural comprehension,  
13 all information contained in the minutes of trustee  
14 meetings and all information relating to individual  
15 compensation cases, which a self-insurer is required  
16 to file with or make available to the superintendent  
17 Insurance Commission under this section, section 23-A  
18 or regulations adopted in relation thereto, shall be  
19 confidential and not constitute public records.

20 The confidential nature of any such information shall  
21 not limit or affect its use by the superintendent In-  
22 urance Commission in administering this Act, includ-  
23 ing, but not limited to, communications with the ser-  
24 vice agent, the Workers' Compensation Commission or  
25 the Maine Self-Insurance Guarantee Association; or

26 **Sec. 53. 39 MRSA §23, sub-§11,** as enacted by PL  
27 1981, c. 637, §2, is amended to read:

28 11. Registration of self-insurers. Registration  
29 of self-insurers shall be governed as follows.

30 A. On or before August 1, 1982, all employers  
31 claiming the status of self-insurer as defined by  
32 this Title on that date shall apply for registra-  
33 tion with the Bureau of Insurance on forms pre-  
34 scribed by the superintendent Insurance  
35 Commission. The application shall contain a  
36 statement identifying the employer as a self-  
37 insurer, which includes the legal organization  
38 and name of each self-insuring employer. The  
39 superintendent Insurance Commission may require  
40 the submission of any further information he it  
41 deems necessary in order to determine whether a

1 self-insurer has been approved pursuant to this  
2 section or is authorized to act as a self-insurer  
3 pursuant to section 25. In the event that an em-  
4 ployer is unable to establish that it has been  
5 approved to act as a self-insurer by either the  
6 superintendent Insurance Commission or the Work-  
7 ers' Compensation Commission, or is authorized to  
8 act as such pursuant to section 25, the  
9 superintendent Insurance Commission shall deny  
10 the application for registration. Upon denial of  
11 registration, an employer may make application  
12 for approval to act as a self-insurer in accord-  
13 ance with all requirements of this Act and the  
14 regulations promulgated pursuant to this Act.

15 B. On January 1st of each year, the  
16 superintendent Insurance Commission shall promul-  
17 gate an official list of self-insurers which are  
18 approved and registered as of that date and the  
19 list of self-insurers shall be forwarded to the  
20 Maine Self-Insurance Guarantee Association. The  
21 superintendent Insurance Commission shall add to  
22 the list at any time during the year the name or  
23 names of any self-insurer or self-insurers which  
24 he it has approved and registered subsequent to  
25 the promulgation of the list and shall similarly  
26 delete the name or names of any self-insurer or  
27 self-insurers whose authority to self-insure has  
28 been terminated. Additions to or deletions from  
29 the official list of self-insurers shall be for-  
30 warded to the Maine Self-Insurance Guarantee As-  
31 sociation when made. Failure to become regis-  
32 tered pursuant to this subsection shall result in  
33 the automatic termination of an employer's au-  
34 thority to self-insure under this Act.

35 **Sec. 54. 39 MRSA §23-A, sub-§1, as amended by PL**  
36 **1985, c. 371, §2, is further amended to read:**

37 **1. Created.** There is created a Maine Self-  
38 Insurance Guarantee Association to provide mechanisms  
39 for the payment of covered claims under self-  
40 insurance coverage, to avoid excessive delay in pay-  
41 ment, to avoid financial loss to claimants because of  
42 the insolvency of a self-insurer and to assist, when  
43 called upon to do so by the superintendent Insurance  
44 Commission, in the detection of self-insurer

1 insolvencies. It is declared that the Maine Self-  
2 Insurance Guarantee Association is an instrumentality  
3 of the State, provided that the debts and liabilities  
4 of the association shall not constitute debts and li-  
5 abilities of the State.

6 Sec. 55. 39 MRSA §23-A, sub-§2, as amended by PL  
7 1981, c. 637, §3, is further amended to read:

8 2. Created; legal entity. There is created a non  
9 profit nonprofit unincorporated legal entity to be  
10 known as the Maine Self-Insurance Guarantee Associa-  
11 tion. All self-insurers, as defined in this Title,  
12 shall be and remain members of the association as a  
13 condition of authority to self-insurer in this State,  
14 except that all of public employers which are indi-  
15 vidual self-insurers, with a net worth equal to or in  
16 excess of \$25,000,000 and in the case of counties,  
17 cities and towns, a state-assessed valuation equal to  
18 or in excess of \$300,000,000 shall not be subject to  
19 this subsection. The association shall perform its  
20 functions under a plan of operation established or  
21 amended, or both, and approved by the superintendent  
22 Insurance Commission and shall exercise its powers  
23 through the board of directors established in this  
24 section.

25 A. A self-insurer shall be deemed to be a member  
26 of the association for purposes of another  
27 self-insurer's insolvency, as defined in subsec-  
28 tion 6, when:

29 (1) The self-insurer is a member of the as-  
30 sociation when an insolvency occurs; 7; or

31 (2) The self-insurer has been a member of  
32 the association at some point in time during  
33 the 12-month period immediately preceding  
34 the insolvency in question.

35 B. A self-insurer shall be deemed to be a member  
36 of the association for purposes of its own insol-  
37 vency when:

38 (1) The self-insurer is a member of the as-  
39 sociation when the insolvency occurs, but  
40 claims relating to a compensable event which

1 occurred prior to the date the self-insurer  
2 joined the association are not included  
3 hereunder; or

4 (2) The self-insurer becomes insolvent af-  
5 ter leaving the association, but claims re-  
6 lating to a compensable event which occurred  
7 prior to the date the self-insurer joined  
8 the association are not included hereunder,  
9 and claims relating to a compensable event  
10 which occurred after the self-insurer ceased  
11 to be an approved self-insurer are not to be  
12 afforded coverage hereunder.

13 C. In determining the membership of the associa-  
14 tion pursuant to paragraphs A and B for any date  
15 after January 1, 1983, no employer claiming self-  
16 insurer status may be deemed to be a member of  
17 the association on any date after January 1,  
18 1983, unless that employer is at that time regis-  
19 tered as a self-insurer by the superintendent In-  
20 urance Commission pursuant to section 23, sub-  
21 section 11.

22 **Sec. 56. 39 MRSA §23-A, sub-§3, as amended by PL**  
23 **1981, c. 637, §4, is further amended to read:**

24 3. Board of directors. The board of directors of  
25 the association shall consist of not less than 7 per-  
26 sons serving terms as established in the plan of op-  
27 eration. The members of the board shall be selected  
28 by the member self-insurers, subject to the approval  
29 of the Superintendent-of Insurance Commission. Vac-  
30 ancies on the board shall be filled for the remain-  
31 ing period of the term in the same manner as initial  
32 appointments, except that vacancies may be filled by  
33 majority vote of the remaining directors, subject to  
34 the approval of the superintendent Insurance  
35 Commission, until the next annual meeting of the mem-  
36 bers. If no members of the board are selected by De-  
37 cember 1, 1981, the superintendent Insurance  
38 Commission may appoint the initial members of the  
39 board of directors.

40 In approving selections to the board, the  
41 superintendent Insurance Commission shall consider  
42 among other things whether all member self-insurers  
43 are fairly represented.

1 Members of the board may be reimbursed from the as-  
2 sets of the association for expenses incurred by them  
3 as members of the board of directors.

4 Sec. 57. 39 MRSA §23-A, sub-§4, ¶A, as amended  
5 by PL 1985, c. 371, §3, is further amended to read:

6 A. The association shall:

7 (1) Obtain from each member and file with  
8 the superintendent Insurance Commission in-  
9 dividual reports specifying the aggregate  
10 benefits each member paid during the previ-  
11 ous calendar year, and the annual standard  
12 premium which would have been paid by each  
13 self-insurer during the previous calendar  
14 year pursuant to manual rates established by  
15 the principal rating organization in the  
16 State and using the experience rating proce-  
17 dure approved by the Superintendent-of In-  
18 urance Commission for that self-insurer.  
19 These reports shall be due on or before July  
20 15th following the close of that calendar  
21 year, except that this deadline may be ex-  
22 tended by the superintendent Insurance  
23 Commission for up to 3 additional months for  
24 good cause shown;

25 (2) Assess each member of the association  
26 as follows:

27 (a) Each individual self-insurer shall  
28 be annually assessed an amount equal to  
29 1% of the annual standard premium which  
30 would have been paid by that individual  
31 self-insurer during the prior calendar  
32 year; payment to the association shall  
33 be made no later than September 15th  
34 following the close of that calendar  
35 year. Where any such assessment is paid  
36 based in whole or in part upon esti-  
37 mates of annual standard premium for  
38 the prior calendar year, there shall be  
39 made in the next year's assessment an  
40 adjustment of the assessment of such  
41 prior year based on actual audited an-  
42 nual standard premium. Regardless of

1 the size of the fund referred to in  
2 subparagraph (3), during its first 12  
3 months of membership, no individual  
4 self-insurer may discount or reduce  
5 this 1% assessment;

6 (b) Each group self-insurer shall be  
7 annually assessed an amount equal to  
8 .1% of the total annual standard premi-  
9 um which would have been paid by all  
10 the members of that group self-insurer  
11 during the prior calendar year; payment  
12 to the association shall be no later  
13 than September 15th following the close  
14 of that calendar year. Where any such  
15 assessment is paid based in whole or in  
16 part upon estimates of annual standard  
17 premium for the prior calendar year,  
18 there shall be made in the next year's  
19 assessment an adjustment of the assess-  
20 ment of such prior year based on actual  
21 audited annual standard premium. Re-  
22 gardless of the size of the fund re-  
23 ferred to in subparagraph (3), during  
24 its first 12 months of membership, no  
25 group self-insurer may discount or re-  
26 duce this .1% assessment;

27 (c) Each member self-insurer shall be  
28 notified of the assessment no later  
29 than 30 days before it is due;

30 (d) If a self-insurer is a member of  
31 the association for less than a full  
32 calendar year, the annual standard pre-  
33 mium shall be adjusted by that portion  
34 of the year the self-insurer is not a  
35 member of the association; and

36 (e) If application of the contribution  
37 rates referred to in divisions (a) and  
38 (b) would produce an amount in excess  
39 of the limits of the fund established  
40 in subparagraph (3) an equitable prora-  
41 tion shall be made;

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(3) Administer a fund, to be known as the Maine Self-Insurance Guarantee Fund, which shall receive the assessments required in subparagraph (2). This fund shall not exceed \$1,000,000, except that once the fund reaches \$1,000,000, the fund shall not exceed \$1,000,000 plus all subsequent initial assessments of new member self-insurers which are required to be made in subparagraph (2), divisions (a) and (b). The costs of administration by the association shall be borne by the fund, and the association is authorized to secure reinsurance and bonds and to otherwise invest the assets of the fund to effectuate the purpose of the association, subject to the approval of the Superintendent-of Insurance Commission.

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(a) The association may purchase primary excess insurance from an insurer licensed in this State for the appropriate lines of authority to defray its exposure to loss occasioned by the default of one or more of its members. Any excess insurance so purchased shall be limited to coverage of post-assessment liability of the association's members and the association shall fund any such purchase by levying a special assessment on its members for this purpose or by application of any unencumbered funds available but which have not been raised by imposition of any preassessment or post-assessment. The association may obtain from each member any information it may reasonably require in order to facilitate the securing of this primary excess insurance. The association shall establish reasonable safeguards designed to ensure that information so received is used only for this purpose and is not otherwise disclosed;

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(4) Be obligated to the extent of covered claims occurring prior to the determination of the self-insurer's insolvency, or occur-



1 ring after such determination but prior to  
2 the obtaining of workers' compensation in-  
3 surance as otherwise required under this Ti-  
4 tle by the self-insurer. Nothing in this  
5 section shall may obligate the association  
6 to pay claims against a self-insurer which  
7 are not or have not been paid as a result of  
8 a determination of insolvency or the insti-  
9 tution of bankruptcy or receivership pro-  
10 ceedings which occurred prior to the effec-  
11 tive date of this section.

12 (a) "Covered claim" means an unpaid  
13 claim against an insolvent self-insurer  
14 which relates to an injury which occurs  
15 while the self-insurer is a member of  
16 the association and which is compensa-  
17 ble under this Act;

18 (5) After paying any claim resulting from a  
19 self-insurer's insolvency, the association  
20 shall be subrogated to the rights of the in-  
21 jured employee and dependents and shall be  
22 entitled to enforce liability against the  
23 self-insurer by any appropriate action  
24 brought in its own name or in the name of  
25 the injured employee and dependents;

26 (6) Assess the fund in an amount necessary  
27 to pay:

28 (a) The obligations for the associa-  
29 tion under this section subsequent to  
30 an insolvency;

31 (b) The expenses of handling covered  
32 claims subsequent to an insolvency;

33 (c) The costs of examinations under  
34 subsection 8; and

35 (d) Other expenses authorized by this  
36 subchapter;

37 (7) Investigate claims brought against the  
38 association and adjust, compromise, settle  
39 and pay covered claims to the extent of the

1 association's obligation and deny all other  
2 claims. The association may review settle-  
3 ments to which the insolvent self-insurer  
4 was a party to determine the extent to which  
5 such settlements may be properly contested;

6 (8) Notify such persons as the  
7 superintendent Insurance Commission directs  
8 under subsection 7;

9 (9) Handle claims through its employees or  
10 through one or more self-insurers or other  
11 persons designated as servicing facilities.  
12 Designation of a servicing facility is sub-  
13 ject to the approval of the superintendent  
14 Insurance Commission, but designation of a  
15 member self-insurer as a servicing facility  
16 may be declined by such self-insurer;

17 (10) Reimburse each servicing facility for  
18 obligations of the association paid by the  
19 facility and for expenses incurred by the  
20 facility while handling claims on behalf of  
21 the association; and

22 (11) Pay the other expenses of the associa-  
23 tion authorized by this section.

24 (a) Establish in the plan of operation  
25 a mechanism to calculate the assess-  
26 ments required by subparagraphs (1),  
27 (2) and (3) by a simple and equitable  
28 means to convert from policy or fund  
29 years which are different from a calen-  
30 dar year.

31 **Sec. 58.** 39 MRSA §23-A, sub-§5, ¶¶A and C, as  
32 enacted by PL 1981, c. 484, §8, is amended to read:

33 A. The association shall submit to the  
34 superintendent Insurance Commission a plan of op-  
35 eration and any amendments thereto necessary or  
36 suitable to assure the fair, reasonable and equi-  
37 table administration of the association. The plan  
38 of operation and any amendments thereto shall be-  
39 come effective upon approval in writing by the  
40 superintendent Insurance Commission. If the asso-

1           ciation fails to submit a suitable plan of operation  
2           by January 1, 1982, or if at any time there-  
3           after the association fails to submit suitable  
4           amendments to the plan, the superintendent Insurance  
5           Commission shall, after notice and hearing,  
6           adopt and promulgate such reasonable rules as are  
7           necessary or advisable to effectuate this section.  
8           Such rules shall continue in force until  
9           modified by the superintendent Insurance  
10           Commission or superseded by a plan submitted by  
11           the association and approved by the  
12           superintendent Insurance Commission.

13           C. The plan of operation shall:

14                   (1) Establish the procedures whereby all  
15                   the powers and duties of the association under  
16                   subsection 4 will be performed;

17                   (2) Establish procedures for handling as-  
18                   sets of the association;

19                   (3) Adopt a reasonable mechanism and procedure  
20                   to achieve equity in assessing the  
21                   funds required in subsection 4, paragraph A,  
22                   subparagraphs (1), (2) and (3), subsection  
23                   4, paragraph C, subparagraph (1) and subsection  
24                   4, paragraph D.

25                   Consideration shall be given to adjustments  
26                   for audited payroll, differential effects  
27                   caused by rate changes and other relevant  
28                   factors;

29                   (4) Establish the amount and method of re-  
30                   imbursing members of the board of directors  
31                   under subsection 3;

32                   (5) Establish procedures by which claims  
33                   may be filed with the association and estab-  
34                   lish acceptable forms of proof of covered  
35                   claims. A list of such claims shall be peri-  
36                   odically submitted to the association;

37                   (6) Establish regular places and times for  
38                   meetings of the board of directors;

1 (7) Establish procedures for records to be  
2 kept of all financial transactions of the  
3 association, its agents and the board of di-  
4 rectors;

5 (8) Provide that any member self-insurer  
6 aggrieved by any final action or decision of  
7 the association may appeal to the  
8 superintendent Insurance Commission within  
9 30 days after the action or decision;

10 (9) Establish the procedures whereby selec-  
11 tions for the board of directors shall be  
12 submitted to the superintendent Insurance  
13 Commission; and

14 (10) Contain additional provisions neces-  
15 sary or proper for the execution of the pow-  
16 ers and duties of the association.

17 **Sec. 59. 39 MRSA §23-A, sub-§§7 and 8, as en-**  
18 **acted by PL 1981, c. 484, §8, are amended to read:**

19 7. Powers and duties of the Insurance Commis-  
20 sion. The powers and duties of the superintendent In-  
21 surance Commission are as follows.

22 A. The superintendent Insurance Commission  
23 shall:

24 (1) Notify the association of the existence  
25 of an insolvent member self-insurer not la-  
26 ter than 30 days after he it receives notice  
27 of an insolvency pursuant to the standards  
28 set forth in subsection 6.

29 B. The superintendent Insurance Commission may:

30 (1) Require that the association notify the  
31 insureds of the insolvent self-insurer and  
32 any other interested parties of the insol-  
33 vency and of their rights under this sec-  
34 tion. Such notifications shall be by mail at  
35 their last ~~knew~~ known addresses, where  
36 available, but if required information for  
37 notification is not available, notice by  
38 publication in a newspaper of general circu-

1 lation in this State shall be sufficient;  
2 and

3 (2) Revoke the designation of any servicing  
4 facility if he it finds claims are being  
5 handled unsatisfactorily.

6 8. Examination of the association. The associa-  
7 tion shall be subject to examination and regulation  
8 by the superintendent Insurance Commission. The  
9 board of directors shall submit, not later than March  
10 30th of each year, a financial report for the  
11 preceeding preceding calendar year in a form approved  
12 by the superintendent Insurance Commission.

13 **Sec. 60.** 39 MRSA §23-A, sub-§10, as amended by  
14 PL 1985, c. 371, §4, is further amended to read:

15 10. Immunity. There shall be no liability on the  
16 part of and no cause of action of any nature may  
17 arise against any member self-insurer, the associa-  
18 tion or its agents or employees, the board of direc-  
19 tors or its individual members, or the superintendent  
20 Insurance Commission or its representatives for any  
21 acts or omissions taken by them in the performance of  
22 their powers and duties under this subchapter. The  
23 immunity established by this subsection shall not ex-  
24 tend to willful neglect or malfeasance which would  
25 otherwise be actionable.

26 **Sec. 61.** 39 MRSA §25, sub-§1, as enacted by PL  
27 1981, c. 637, §7, is amended to read:

28 1. Benefit system. Subject to the approval of  
29 the Superintendent--of Insurance Commission, any em-  
30 ployer may continue with his employees, in lieu of  
31 the compensation, benefits and insurance provided by  
32 this Act, the system thereof which was used by such  
33 employer on January 1, 1915. No such substitute sys-  
34 tem may be approved unless it confers benefits upon  
35 injured employees at least equivalent to the benefits  
36 provided by this Act, nor if it requires contribu-  
37 tions from the employees, unless it confers benefits  
38 in addition to those provided under this Act at least  
39 commensurate with such contributions. Such substi-  
40 tute system may be terminated by the superintendent  
41 Insurance Commission with the advice of the commis-

1 sion on reasonable notice and hearing to the inter-  
2 ested parties, if it appears that the substitute sys-  
3 tem is not fairly administered, or if its operation  
4 discloses latent defects threatening its solvency, or  
5 if for any substantial reason it fails to accomplish  
6 the purposes of this Act. Notwithstanding Title 5,  
7 section 10051, the superintendent Insurance  
8 Commission is expressly granted the authority to re-  
9 voke or suspend the authority of an employer to con-  
10 tinue with a substitute system of benefits under this  
11 section after a hearing held in accordance with Title  
12 5, chapter 375, subchapter IV, and Title 24-A, chap-  
13 ter 3 3-A. An employer who is authorized to substi-  
14 tute a plan under sections 21 to 27 shall give his  
15 employees notice thereof in a form to be prescribed  
16 by the commission, and a statement of the plan ap-  
17 proved shall be filed with the superintendent Insur-  
18 ance Commission.

19 **Sec. 62. 39 MRSA §29, first ¶, as enacted by PL**  
20 **1985, c. 446, §5, is amended to read:**

21 There shall be an assessment levied annually by  
22 the Superintendent--of Insurance Commission upon  
23 self-insuring employers approved pursuant to section  
24 23, respecting the operations of each self-insurer  
25 conducted in this State to defray the cost of admin-  
26 istration of the Bureau of Insurance. The annual as-  
27 sessment upon approved self-insuring employers shall  
28 be calculated using imputed annual standard premium  
29 relating to business operations in this State which  
30 each self-insurer would have paid during the previous  
31 calendar year pursuant to manual rates established by  
32 the principal rating organization in this State and  
33 using the experience rating procedure approved by the  
34 Superintendent-of Insurance Commission for that self-  
35 insurer. The assessment shall be applied to the  
36 budget of the bureau for the fiscal year commencing  
37 July 1st. The assessment shall be in an amount not  
38 exceeding 1/10 of 1% of imputed annual standard pre-  
39 mium. When the superintendent Insurance Commission  
40 calculates the amount of the annual assessment, he it  
41 shall consider, among other things, the staffing lev-  
42 el required to administer workers' compensation self-  
43 insurance oversight responsibilities of the bureau.

1           **Sec. 63.** 39 MRSA §29, sub-§§1, 4, 6, 7 and 8, as  
2 enacted by PL 1985, c. 446, §5, are amended to read:

3           1. Annual standard premium. The superintendent  
4 Insurance Commission shall utilize annual standard  
5 premium for each approved self-insurer as reported to  
6 the Bureau of Insurance by the Maine Self-Insurance  
7 Guarantee Association pursuant to section 23-A, sub-  
8 section 4, in determining the amount of the assess-  
9 ment.

10           4. Notification of assessment. On or before  
11 April 1st, next following receipt of the report from  
12 the Maine Self-Insurance Guarantee Association, the  
13 ~~Superintendent--of~~ Insurance Commission shall notify  
14 each self-insurer of the assessment due.

15           6. Revocation or termination. If the assessment  
16 is not paid on or before June 1st, the right of any  
17 individual or group to continue the option of self-  
18 insurance may be revoked or terminated by the ~~Super-~~  
19 ~~intendent--of~~ Insurance Commission.

20           7. Recalculation of assessment. Immediately  
21 following the close of the fiscal year ending June  
22 30, 1987, and at the close of each fiscal year there-  
23 after, the ~~Superintendent--of~~ Insurance Commission  
24 shall recalculate the assessment upon each self-  
25 insurer subject to this section. If, in any in-  
26 stance, any assessment paid under this section is  
27 based in whole or in part upon annual standard premi-  
28 um estimated in the calendar year utilized for as-  
29 sessment purposes, the recalculation shall recognize  
30 actual audited annual standard premium, as available,  
31 for each affected self-insurer. Actual expenditures  
32 of the Bureau of Insurance during the preceding fis-  
33 cal year shall also be recognized. On or before Oc-  
34 tober 1st, the ~~Superintendent--of~~ Insurance Commission  
35 shall render to each self-insurer a statement showing  
36 the difference between their respective recalculated  
37 assessment and the amount they paid during the pre-  
38 ceding fiscal year. Any overpayment of annual as-  
39 sessment resulting from complying with the require-  
40 ments of this section shall be refunded or, at the  
41 option of the assessed party, applied as a credit  
42 against the assessment for the succeeding fiscal  
43 year. Any overpayment of \$100 or less shall be ap-

1 plied as a credit against the assessment for the suc-  
2 ceeding fiscal year.

3 8. Deposit with Treasurer of State. The Super-  
4 ~~intendent~~ of Insurance Commission shall deposit all  
5 payments made pursuant to this section with the Treas-  
6 urer of State. The money shall be used for the sole  
7 purpose of paying the expenses of the Bureau of In-  
8 surance for administration of the Self-insurer's  
9 Workers' Compensation Program.

10 **Sec. 64. Revision clause.** Wherever in the Maine  
11 Revised Statutes the words "Superintendent of Insur-  
12 ance" and "superintendent" appear or reference is  
13 made to those words, they shall be amended to read  
14 and mean "Insurance Commission" and "commission" re-  
15 spectively.

16 On the effective date of this Act, the Revisor of  
17 Statutes is authorized to make all appropriate  
18 changes in wording to reflect the intent indicated  
19 within this section.

20 STATEMENT OF FACT

21 The purpose of this bill is to establish a  
22 3-member Insurance Commission to perform the func-  
23 tions of the Superintendent of Insurance.

24 1742050487