

MAINE STATE LEGISLATURE

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(Emergency)
(New Draft of S.P. 691, L.D. 1917)
SECOND SPECIAL SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

No. 1925

S.P. 700

In Senate, November 19, 1987

Reported by the Majority for the Committee on Banking and Insurance and printed under Joint Rule 2. Original Bill sponsored by Senator Collins of Aroostook. Cosponsored by: Representative Willey of Hampden.

JOY J. O'BRIEN, Secretary of the Senate

STATE OF MAINE

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

**AN ACT to Reform the Process by which
Insurance Rates are Established under
the Maine Workers' Compensation Act.**

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

Whereas, there is a statutory requirement that all employers in the State provide workers' compensation coverage; and

Whereas, most, if not all, of the insurance carriers writing such workers' compensation insurance in the State are withdrawing from the business; and

1 Whereas, comprehensive legislative reform is
2 urgently needed as it is the only possibility for
3 saving the private insurance market for workers' com-
4 pensation, without which employers cannot operate;
5 and

6 Whereas, in the judgment of the Legislature,
7 these facts create an emergency within the meaning of
8 the Constitution of Maine and require the following
9 legislation as immediately necessary for the preser-
10 vation of the public peace, health and safety; now,
11 therefore,

12 Be it enacted by the People of the State of Maine as
13 follows:

14 Sec. 1. 24-A MRSA §2302, sub-§3, as repealed and
15 replaced by PL 1985, c. 372, Pt. B, §2, is amended to
16 read:

17 3. Workers' compensation shall first be subject
18 to chapter 25, subchapter ~~II~~ II-A, but any other
19 parts of this chapter ~~and Title 39~~ subchapter not in-
20 consistent with those sections shall also apply.

21 Sec. 2. 24-A MRSA §2303, sub-§1, ~~¶C~~, as amended
22 by PL 1985, c. 372, Pt. B, §3, is further amended to
23 read:

24 C. Due consideration shall be given:

25 (1) To past and prospective loss experience
26 within and outside this State;

27 (2) To the conflagration and catastrophe
28 hazards;

29 (3) To a reasonable margin for underwriting
30 profit and contingencies;

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

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

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

3 (6-A) In the case of workers' compensation
4 rates, consideration shall be given to the
5 information required to be filed under Title
6 397-section-22-D7-subsections-4-and--5 sec-
7 tion 2363; and

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

14 Sec. 3. 24-A MRSA c. 25, sub-c. II, as amended,
15 is repealed.

16 Sec. 4. 24-A MRSA c. 25, sub-c. II-A is enacted
17 to read:

18 SUBCHAPTER II-A

19 WORKERS' COMPENSATION RATES

20 §2361. Title

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

24 §2362. Workers' compensation rates

25 Workers' compensation rates and classifications
26 shall be approved, modified, or disapproved by the
27 superintendent subject to this chapter. Rates deter-
28 mined by the superintendent are maximum rates. Pre-
29 mium rates less than those approved may be used if
30 filed with the superintendent within 5 days after
31 commencing use. If the superintendent has reason to
32 believe that the filing produces rates which are in-
33 adequate or unfairly discriminatory, he may disap-
34 prove them under chapter 23 and chapter 25, subchap-
35 ter I.

36 §2363. Approval of insurance policies and rates

1 The following provisions apply to workers' com-
2 ensation insurance policies and rates.

3 1. Policies. Every insurance company issuing
4 workers' compensation insurance policies covering the
5 payment of compensation and benefits provided for in
6 this subchapter shall use only policy forms approved
7 pursuant to section 2412.

8 2. Determination of rates. Every insurer issu-
9 ing workers' compensation insurance policies shall
10 file with the superintendent its classification of
11 risks and maximum premium rates, which may not take
12 effect until the superintendent has approved them.
13 The superintendent shall apply the procedures and
14 standards of this section in investigating, reviewing
15 and determining just and reasonable rates. The su-
16 perintendent may:

17 A. Require the filing of specific rates for
18 workers' compensation insurance, including clas-
19 sification of risks, experience or any other rat-
20 ing information from insurance companies autho-
21 rized to transact insurance in this State;

22 B. Make or cause to be made investigations as he
23 deems necessary to satisfy himself that the rates
24 to be promulgated are just and reasonable; and

25 C. At any time, after public hearing, withdraw
26 his approval of a previously approved rate fil-
27 ing.

28 3. Notice of filing. At least 20 days prior to
29 any filing for rates under this section, a person
30 filing shall notify the superintendent in writing of
31 the intention to file and shall disclose the approxi-
32 mate amount of a requested increase or decrease and a
33 description of major rating rule changes to be pro-
34 posed. Within 10 days of receipt, the superintendent
35 shall notify the public by publication in a newspaper
36 of general circulation and notify the Public Advocate
37 that a rate filing is to be made. Restrictions on ex
38 parte communications, as provided for in Title 5,
39 section 9055, shall be applicable on the date the su-
40 perintendent receives the notice of intention to
41 file.

1 4. Contents of filing. A rate filing shall in-
2 clude:

3 A. For each of the 3 calendar years immediately
4 preceding the date of the filing including, in
5 the case of a filing made by a rating organiza-
6 tion, data for each year from each insurer which
7 had 1% or more of the total written premium for
8 that year:

9 (1) The actual direct earned premium allo-
10 cable to the coverage of risks in this
11 State;

12 (2) Unearned premium, earned premium, loss
13 and loss expense reserve and capital and
14 surplus subject to investment, allocable to
15 the coverage of risks in this State;

16 (3) For the investment corresponding to the
17 liabilities and capital and surplus referred
18 to in subparagraph (2):

19 (a) The amount of investments;

20 (b) The types of investments; and

21 (c) The annual income amounts, before
22 taxes, generated by the aggregate of
23 these investments;

24 (4) The gross rate of return on admitted
25 assets;

26 (5) The amount of dividends or the equiva-
27 lent allowed or returned to policyholders;

28 (6) The aggregate annual expenses allocable
29 to the coverage of risks in this State, in-
30 cluding acquisition and field supervision
31 expenses, taxes, licenses and fees, other
32 than federal income tax and general ex-
33 penses, each stated separately. Safety en-
34 gineering expense and loss control services'
35 expense shall be stated separately under
36 general expense;

1 (7) The aggregate annual losses and loss
2 adjustment expenses allocable to the cover-
3 age of risks in this State; and

4 (8) The changes and improvements instituted
5 in loss control and employee safety engi-
6 neering;

7 With respect to rate filings made before July 1,
8 1988, the information required by subparagraphs
9 (1) to (8) shall be required only for each of the
10 3 calendar years immediately preceding the date
11 of the filing for which financial information is
12 available;

13 B. For each risk classification:

14 (1) The rate presently applicable to the
15 classification;

16 (2) The rate proposed for the classifica-
17 tion;

18 (3) Loss experience in this State for each
19 of the 3 most recent years available, in-
20 cluding, in each classification, payroll,
21 number of serious workers' compensation
22 cases, number of nonserious cases, the
23 losses, including medical expense incurred
24 with respect to each type of case, loss ad-
25 justment expense and the total of all losses
26 and expenses incurred; and

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

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

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 those that are known or
37 believed to be contrary to established policy of
38 the superintendent; and

1 E. Any other information required to be included
2 by the superintendent.

3 5. Aggregate data. Aggregate expense data, annual
4 losses, loss adjustment expense data and loss
5 experience data required to be reported under subsection
6 4, paragraph A, subparagraphs (6) and (7), and
7 paragraph B, subparagraph (3), shall be based on ex-
8 penditure and experience data pertaining to this State,
9 except as otherwise provided in this subsection. The
10 rate of return on capital and surplus used in estab-
11 lishing the rates requested, the rate of return on
12 the investment allocable to the coverage of risks in
13 this State and the facts, assumptions and calcula-
14 tions employed to derive each rate of return shall
15 also be reported in the aggregate.

16 A. To the extent that the State expense and ex-
17 perience data is not fully credible, the superin-
18 tendent may allow reporting of and consider data
19 from outside this State.

20 B. Aggregate loss experience data shall:

21 (1) Include and be categorized as required
22 in subsection 4, paragraph B, subparagraph
23 (3); and

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

29 6. Additional information. The superintendent
30 may require, at any time, any additional information
31 he deems necessary and may reasonably extend the time
32 periods established in subsection 9 to allow time to
33 provide that information.

34 A. Within 30 days of receipt of a filing, the
35 superintendent shall determine if the filing is
36 complete.

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

1 (2) An applicant shall complete or amend
2 the filing within 30 days of that written
3 notice. Upon motion by the applicant made
4 within the 30-day period and upon a showing
5 of good cause, the superintendent may extend
6 the 30-day period as he deems appropriate.

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

15 B. If the applicant fails to furnish the infor-
16 mation within the time prescribed, the superin-
17 tendent may issue an order dismissing the filing.

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

29 7. Standard for approval. This subsection ap-
30 plies to determination of just and reasonable rates
31 for a filing.

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

35 (1) Just and reasonable and not excessive,
36 inadequate or unfairly discriminatory; and

37 (2) Based only on a just and reasonable
38 profit.

39 B. In establishing just and reasonable rates,
40 the superintendent shall consider:

- 1 (1) The reasonableness of any return on
2 capital and surplus allocable to the cover-
3 age of risks in this State;
- 4 (2) The reasonableness of the amounts of
5 capital and surplus allocable to the cover-
6 age of risks in this State;
- 7 (3) The reported investment income earned
8 or realized from funds generated from busi-
9 ness in this State;
- 10 (4) The reported loss reserves, including
11 the methods and the interest rates used in
12 determining the present value for reported
13 reserves and the use of those reserves in
14 the determination of the proposed rates;
- 15 (5) The reported annual losses and loss ad-
16 justment expenses;
- 17 (6) The measures taken to contain costs,
18 including loss control, loss adjustment and
19 employee safety engineering programs;
- 20 (7) The relationship of the aggregate
21 amount of operating expenses reported by all
22 companies to the annual operating expenses
23 reported in the filing and the annual insur-
24 ance expense exhibits filed by each company
25 with the superintendent;
- 26 (8) The impact of operating and management
27 efficiency of the companies on expense levels
28 and the effect of variations in expense lev-
29 els on rates; and
- 30 (9) Any premium surcharges or credits or-
31 dered by the superintendent pursuant to sec-
32 tion 2367.
- 33 C. The justness and reasonableness of rates
34 shall be determined for the period in which the
35 rates are in effect. Losses in the residual mar-
36 ket in any preceding year may not be included in
37 the determination of rates.

1 D. The filer shall have the burden of proving
2 that the rates meet the requirements of this
3 chapter and chapter 23.

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

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

19 8. Public record. A rate filing shall be a pub-
20 lic record and shall be available for public review
21 and inspection.

22 9. Public Advocate participation. The Public
23 Advocate shall participate as follows.

24 A. The Public Advocate, as appointed under Title
25 35-A, section 1701, shall be a party to the pro-
26 ceeding resulting from each rate filing made un-
27 der this section. A copy of the filing shall be
28 served on the Public Advocate at the same time as
29 it is filed with the superintendent.

30 B. A party filing for a rate change under this
31 section shall pay to the superintendent at the
32 time of filing a filing fee of \$50,000, which the
33 superintendent shall immediately credit to the
34 Public Advocate. The fee shall be segregated and
35 expended for the purpose of employing outside
36 consultants and of paying other expenses to ful-
37 fill the requirements of this subsection. Any
38 portion of the fee not so expended shall be re-
39 turned to the filer.

1 10. Information for parties and intervenors. A
2 party or intervenor may make written application to
3 the superintendent for an order that a filer produce
4 information relevant to whether the filing meets the
5 requirements of this Title, except for information
6 relating to a particular claim or information which
7 is unduly burdensome or repetitious. If the party
8 filing fails to furnish the information within the
9 time prescribed by the superintendent, the party or
10 intervenor making the request may make written appli-
11 cation to the superintendent for an order dismissing
12 the filing. If, after a hearing, the superintendent
13 determines that the failure to furnish the informa-
14 tion was without good cause, he shall issue an order
15 for dismissal of the filing.

16 11. Public hearing. The superintendent shall
17 hold a public hearing as provided in sections 229 and
18 235 on each filing. The public hearing shall be con-
19 ducted no sooner than 30 days and no later than 60
20 days of the date the rate filing is deemed complete
21 by the superintendent, unless the superintendent ex-
22 tends these limits under subsection 6. The superin-
23 tendent shall establish just and reasonable rates and
24 state his findings in a written order issued within
25 90 days from the date the filing is completed, unless
26 he extends this limit under subsection 6. If the su-
27 perintendent denies or dismisses a filing, any fur-
28 ther filing shall be deemed to be a new filing, sub-
29 ject to this public hearing requirement.

30 12. Subsequent filing. A person may not file a
31 rate filing within 180 days of receiving a rate in-
32 crease or decrease. If a filing has been disapproved
33 by the superintendent, the requirements of this sub-
34 section shall not operate to delay a new filing and
35 the data required by subsection 4, paragraph A, shall
36 only be required for each of the 3 most recent calen-
37 dar years for which data are available.

38 13. Procedure; rules. Subject to the applicable
39 requirements of the Maine Administrative Procedure
40 Act, Title 5, chapter 375, the superintendent may
41 adopt rules establishing procedures for the adminis-
42 tration of this section, including, procedures govern-
43 ing submission of petitions for intervenor status,
44 pre-filing of testimony and exhibits, information re-

1 quests, subpoenas, prehearing conferences and conduct
2 of hearings.

3 14. Costs. For the purpose of determining wheth-
4 er a filing meets the requirements of this section,
5 the superintendent may employ outside consultants.
6 The organization or insurer making the filing shall
7 be responsible for the reasonable costs related to
8 the review of workers' compensation rate filings, in-
9 cluding conduct of the hearing.

10 §2364. Uniform classification system; experience and
11 merit rating plans

12 1. Uniform plans. Every workers' compensation
13 insurer, including self-insurers, shall adhere to a
14 uniform classification system and uniform experience
15 rating plan filed with the superintendent by an ad-
16 visory organization. An insurer may develop
17 subclassifications of the uniform classification sys-
18 tem on which a rate may be made provided that:

19 A. A subclassification must be filed with the
20 superintendent 30 days prior to its use; and

21 B. The superintendent may disapprove a
22 subclassification if:

23 (1) The insurer fails to demonstrate that
24 the data produced may be reported consistent
25 with the uniform statistical plan and clas-
26 sification system; or

27 (2) The proposed subclassification:

28 (a) Is not reasonably related to the
29 exposure;

30 (b) Is not adequately defined;

31 (c) Has not been shown to distinguish
32 among insured based on the potential
33 for or hazard of loss; or

34 (d) Is likely to be unfairly discrimi-
35 natory.

1 2. Statistical advisory organization. The super-
2 intendent shall designate an advisory organization to
3 assist in gathering, compiling and reporting relevant
4 statistical information. Every workers' compensation
5 insurer shall record and report its workers' compen-
6 sation experience to the designated advisory organi-
7 zation as set forth in the uniform statistical plan.
8 The organization designated pursuant to section 2371,
9 subsection 1, shall collect and compile data for em-
10 ployers who are self-insured.

11 3. Manual rules. The designated advisory organi-
12 zation shall develop and file manual rules, subject
13 to the approval of the superintendent, which are rea-
14 sonably related to the recording and reporting of da-
15 ta pursuant to the uniform statistical plan, uniform
16 experience rating plan and uniform classification
17 system.

18 4. Experience and merit rating plans. An experi-
19 ence or merit rating plan shall contain reasonable
20 eligibility standards and provide adequate incentives
21 for loss prevention and for sufficient premium dif-
22 ferentials to encourage safety. The experience rating
23 plan shall provide reasonable and equitable limita-
24 tions on the ability of policyholders to avoid the
25 impact of past adverse claims experience through
26 change of ownership, control, management or opera-
27 tion.

28 A. The uniform experience rating plan shall be
29 the exclusive means for providing prospective
30 premium adjustments based upon the past claim ex-
31 perience of an individual insured.

32 B. Insurers may file rating plans that provide
33 for retrospective premium adjustments based on an
34 insured's past experience. Except as provided in
35 section 2366, subsection 7, in both the voluntary
36 market and the residual market, retrospective
37 rating plans shall be voluntary and shall not be
38 used without the prior consent of the insured.

39 C. If an insured is not eligible for an experi-
40 ence rating plan, a merit rating plan shall be
41 applied using the following guidelines.

1 (1) A plan shall provide for the following
2 minimum credits or maximum debits to be ap-
3 plied to the otherwise applicable manual
4 premium, based on the number of lost-time
5 claims of the insured during the most recent
6 3-year period for which statistics are
7 available:

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

10 (b) One claim resulting in a loss ra-
11 tio greater than 1.0, no credit or deb-
12 it; and

13 (c) Two or more claims resulting in a
14 loss ratio greater than 1.0, an 8% deb-
15 it.

16 (2) The insurer shall notify the insured of
17 the premium adjustment and the reason for
18 the adjustment.

19 D. The superintendent shall report to the joint
20 standing committee of the Legislature having ju-
21 risdiction over insurance by January 30, 1989,
22 regarding the operation of the merit rating plan
23 in paragraph C. The report shall include the
24 number of insureds using the merit rating plan,
25 the number receiving either a debit or credit,
26 and any recommendations on ways to improve the
27 effectiveness of the merit rating law.

28 §2365. Optional deductibles

29 1. Optional deductible. Each insurer transacting
30 or offering to transact workers' compensation insur-
31 ance in this State shall offer optional deductibles
32 to employers not subject to section 2366, subsection
33 6, which may be used upon election by the insured.

34 A. Deductibles shall be available for indemnity
35 benefits in amounts of \$1,000 and \$5,000 a claim
36 and such other reasonable amounts as may be ap-
37 proved by the superintendent.

1 B. The deductible form shall provide that the
2 claim shall be paid by the applicable insurer,
3 which shall then be reimbursed by the employer
4 for any deductible amounts paid by the carrier.
5 The employer shall be liable for reimbursement up
6 to the limit of the deductible.

7 C. An insurer shall not be required to offer a
8 deductible to an employer if, as a result of a
9 credit investigation, the insurer determines that
10 the employer is not sufficiently financially sta-
11 ble to be responsible for the payment of deduct-
12 ible amounts.

13 §2366. Workers' compensation insurance residual mar-
14 ket mechanism

15 1. Participation. All insurers authorized to
16 write workers' compensation and employers' liability
17 insurance in this State shall participate in the
18 workers' compensation insurance residual market mech-
19 anism, which is composed of an Accident Prevention
20 Account and a Safety Pool. The residual market mech-
21 anism is not a state fund and the State shall have no
22 proprietary interest in it or in any contributions
23 made to it. This mechanism shall be exempt from any
24 budgetary control or supervision by state agencies,
25 except to the extent an insurance company is super-
26 vised or controlled by state agencies.

27 2. Accident Prevention Account; eligibility.
28 Eligibility for insurance from the Accident Preven-
29 tion Account shall be as follows.

30 A. The Accident Prevention Account shall be an
31 insurance plan that provides for the equitable
32 apportionment among insurers of insurance which
33 may be afforded applicants who are entitled to,
34 but unable to, procure that insurance through or-
35 inary methods because of their demonstrated acci-
36 dent frequency problem, measurably adverse loss
37 ratio over a period of years or demonstrated at-
38 titude of noncompliance with safety requirements.

39 B. An employer is eligible for insurance from
40 the Accident Prevention Account if:

1 (1) The employer has a loss ratio greater
2 than 1.00 over the last 3 years for which
3 data is available; and

4 (2) The employer has attempted to obtain
5 insurance in the voluntary market and has
6 been refused by at least 2 insurers which
7 write that insurance in this State. For the
8 purpose of this section, an employer shall
9 be considered to have been refused if of-
10 fered insurance only under a retrospective
11 rating plan or plans.

12 3. Safety Pool; eligibility. Eligibility under
13 the Safety Pool shall be as follows.

14 A. The Safety Pool is an insurance plan that
15 provides for an alternative source of insurance
16 for employers with good safety records and is in-
17 tended to operate within the framework of the
18 voluntary insurance market.

19 B. An employer shall be eligible for the Safety
20 Pool if that employer:

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

25 (2) Has a loss ratio which does not exceed
26 1.0 over the last 3 years for which data is
27 available; or

28 (3) Has been in business for less than 3
29 years, provided that the eligibility shall
30 terminate if his loss ratio exceeds 1.0 at
31 the end of any year.

32 C. A member of the Safety Pool who fails to meet
33 eligibility requirements under paragraph B shall
34 be ordered to leave the Safety Pool after notice
35 under Title 39, section 23, subsection 1.

36 4. Plan of operation. The superintendent shall
37 adopt rules pursuant to Title 5, chapter 375, sub-
38 chapter II, establishing a plan of operation for the

1 residual market mechanism. The plan of operation
2 shall contain those terms which the superintendent in
3 his discretion deems necessary.

4 A. The plan shall include an experience rating
5 system and merit rating plan providing that the
6 premium of each employer in the account is modi-
7 fied either prospectively or retrospectively. An
8 experience modification shall only be applied to
9 the manual rate of the plan. The sensitivity of
10 a rating system may vary by size of the risk in-
11 volved.

12 B. The plan shall provide for premium surcharges
13 for employers in the Accident Prevention Account
14 based on their specific loss experience within a
15 specified period or other factors which are rea-
16 sonably related to their risk of loss.

17 (1) Premium surcharges apply to a premium
18 that is experience or merit rating modified.

19 (2) Premium surcharges shall not exceed 10%
20 prior to January 1, 1989.

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

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

29 (b) "B" is the expected incurred
30 losses of a risk during that period as
31 calculated under the uniform experience
32 or merit rating plan multiplied by the
33 risk's current experience or merit rat-
34 ing modification factor.

35 (4) The premium surcharge shall be as fol-
36 lows:

37 Ratio of "A" to "B" Surcharge

1	<u>Less than 1.20</u>	<u>None</u>
2	<u>1.20 or greater, but</u>	
3	<u>less than 1.30</u>	<u>5%</u>
4	<u>1.30 or greater, but</u>	
5	<u>less than 1.40</u>	<u>10%</u>
6	<u>1.40 or greater, but</u>	
7	<u>less than 1.50</u>	<u>15%</u>
8	<u>1.50 or greater</u>	<u>20%</u>

9 C. Commissions under a plan shall be established
10 at a level that is neither an incentive nor a
11 disincentive to place an employer in the residual
12 market.

13 D. In addition to factors in paragraphs A to C,
14 any servicing contract shall be approved on the
15 basis of acceptable price and performance.

16 E. If after notice and hearing the superintend-
17 ent determines that insurers are unwilling to
18 provide services which are reasonably necessary
19 for the operation of the plan, the superintendent
20 may award service contracts within various areas
21 of the State on the basis of acceptable price and
22 performance. If the superintendent chooses to
23 award such contracts, the specifications shall
24 give special consideration to loss control, safe-
25 ty engineering and any other factor that affects
26 safety.

27 F. The superintendent shall report to the joint
28 standing committee of the Legislature having ju-
29 risdiction over insurance by January 30, 1989,
30 regarding the servicing fee and performance of
31 the servicing insurer. The report shall include
32 recommendations regarding the institution of a
33 bidding process to award servicing contracts.

34 5. Rates. Rate filings for rates in the Acci-
35 dent Prevention Account and the Safety Pool shall be
36 made together and shall be subject to section 2363.

37 A. A rate filing for the residual market shall
38 include experience and merit rating plans. The
39 experience rating plan shall be the uniform expe-
40 rience rating plan. The merit plan shall provide
41 the maximum credits possible to Safety Pool mem-

1 bers on the basis of individual loss experience,
2 including frequency and severity, consistent with
3 this chapter and sound actuarial principles.

4 B. The superintendent shall review the rates,
5 rating plans and rules, including rates for indi-
6 vidual classifications and subclassifications, in
7 the Accident Prevention Account and the Safety
8 Pool at least once every 2 years and may review
9 rates more frequently if necessary.

10 6. Mandatory deductible. A deductible shall ap-
11 ply to all workers' compensation insurance policies
12 issued to employers in the Accident Prevention Ac-
13 count which meet the following qualifications:

14 A. A net annual premium of \$12,000 or more sub-
15 ject to adjustment pursuant to this section in
16 this State; and

17 B. A premium not subject to retrospective rat-
18 ing;

19 The deductible shall be \$1,000 a claim but shall ap-
20 ply only to wage loss benefits paid on injuries oc-
21 curring during the policy year. In no event may the
22 sum of all deductibles in one policy year exceed the
23 lesser of 15% of net annual premium or \$25,000. Each
24 loss to which a deductible applies shall be paid in
25 full by the insurer. After the policy year has exp-
26 ired, the insurer shall be reimbursed by the amount
27 of the deductibles by the employer. This reimburse-
28 ment shall be considered as premium for purposes of
29 cancellation or nonrenewal.

30 For purposes of calculations required under this sec-
31 tion, losses shall be evaluated 60 days from the
32 close of the policy year.

33 The superintendent shall report to the joint standing
34 committee of the Legislature having jurisdiction over
35 insurance by January 30, 1989, regarding the appro-
36 priateness of the initial premium level set in para-
37 graph A.

38 After any adjustment of the premium level in 1989 in
39 response to the superintendent's report, the superin-

1 tendent may adjust the premium level through
2 rulemaking if inflationary factors or rate increases
3 warrant any changes.

4 This subsection shall take effect on the effective
5 date of the first approved rate filing after the ef-
6 fective date of this Act.

7 7. Mandatory retrospective rating. The superin-
8 tendent may impose retrospective rating plans under
9 the following circumstances:

10 A. The superintendent shall by rule establish
11 standards governing the application of retrospec-
12 tive rating plans whereby the superintendent may
13 order, after hearing, a retrospective rating plan
14 for an employer in the Accident Prevention Ac-
15 count who has sufficient size in terms of premium
16 and number of employees to warrant such rating
17 and:

18 (1) For the 3 most recent years for which
19 data is available, an experience modifica-
20 tion factor and a loss ratio which may indi-
21 cate a serious problem of workplace safety;
22 or

23 (2) A demonstrated record of repeated seri-
24 ous violations of workplace health and safe-
25 ty regulations adopted under the Maine Re-
26 vised Statutes, Title 26, chapter 6, or the
27 United States Code, Title 29, Chapter 15,
28 whichever is applicable.

29 B. In no event may the maximum premium, includ-
30 ing any applicable surcharge under this section,
31 exceed 150% of standard premium.

32 8. Contracts; consultants. The superintendent
33 may, in its discretion, enter into contracts for the
34 provision of any services necessary or appropriate to
35 the operation of the residual market mechanism and
36 may retain consultants to provide such other techni-
37 cal and professional services as he may require for
38 the discharge of his duties.

39 9. Report. Beginning in 1989, the superintend-

1 ent shall annually issue a report on or before April
2 1st, to the Governor, the President of the Senate and
3 the Speaker of the House of Representatives. The re-
4 port shall include at least the following information
5 relating to the Safety Pool:

6 A. The percentage of total insured premium in
7 this State written in the Safety Pool;

8 B. The percentage of all insured employers in
9 this State written in the Safety Pool;

10 C. The number of employers in the Safety Pool
11 and the number who have entered or left;

12 D. The total earned premium, paid losses, re-
13 serves and incurred losses; and

14 E. The investment income of the Safety Pool and
15 its method of allocation or determination.

16 §2367. Workers' compensation rates; annual
17 surcharges and credits

18 Beginning in 1990, the superintendent shall annu-
19 ally determine, after hearing but on or before Febru-
20 ary 15th of each year, whether premiums collected
21 from risks in the residual market and investment in-
22 come allocable to those premiums are greater or less
23 than the incurred losses and expenses associated with
24 that market. In establishing surcharges under this
25 section, the superintendent may approve application
26 of surcharges to policies issued on or after January
27 1st, but prior to the date of his order, provided
28 that the policies contain language approved by the
29 superintendent which is sufficient to notify policy-
30 holders that they may be subject to surcharges ap-
31 proved after the effective date of their policies.
32 For purposes of this section, the residual market
33 shall be the Accident Prevention Account and the
34 Safety Pool. For purposes of this section, "deficit"
35 means the amount by which incurred losses and ex-
36 penses associated with the residual market exceed
37 premiums collected from risks in that market and in-
38 vestment income allocable to those premiums. The su-
39 perintendent shall also determine whether insurers
40 have in good faith made their best efforts to

1 maximize the number of risks in the voluntary market
2 for workers' compensation insurance in the State.
3 The superintendent may make timely and appropriate
4 requests for any data deemed necessary by the super-
5 intendent to make these determinations.

6 In making the determinations required by this sec-
7 tion, the superintendent shall apply statutory insur-
8 ance accounting standards and utilize sound actuarial
9 principles. In making these determinations, no
10 losses for policies issued prior to January 1, 1988,
11 shall be considered. Each review shall be on a
12 policy-year basis and apply to the policy year prior
13 to the year in which the review is being made and all
14 other prior policy years beginning on or after Janu-
15 ary 1, 1988. The calculations and determinations re-
16 quired of the superintendent shall be made on a cumu-
17 lative basis for each policy year under consideration
18 such that each year's determination shall be based on
19 all available data relating to a given policy year.
20 For each year under review, the superintendent shall
21 determine the following.

22 1. Premium surplus. If the superintendent de-
23 termines that premiums collected from the insureds in
24 the residual market and investment income allocable
25 to those premiums are greater than the incurred
26 losses and expenses attributable to the risks in that
27 market, the superintendent shall order an appropriate
28 credit applied to the premiums paid by policyholders
29 in the residual market.

30 2. Premium deficit. Payment of any premium def-
31 icit shall be determined in the following manner.

32 A. If the superintendent determines that premi-
33 ums and investment income attributable to those
34 premiums are less than incurred losses and ex-
35 penses in the residual market, the superintendent
36 shall then determine the rate of return for the
37 insurance industry in the entire Maine workers'
38 compensation market. If the rate of return is
39 found, considering all relevant factors, to be
40 less than reasonable, the superintendent shall
41 order a surcharge on premiums paid by insureds in
42 both the voluntary and involuntary markets.

1 B. Any deficit determined by the superintendent
2 pursuant to paragraph A shall not be the respon-
3 sibility of the insurers on an individual or col-
4 lective basis but shall rather be the financial
5 obligation of all insured employers in the State.
6 The surcharge shall be an amount at least to off-
7 set the adverse cash flows resultant from the de-
8 ficiency, provided that the application of such
9 surcharge does not produce a rate of return in
10 excess of a just and reasonable profit in the en-
11 tire Maine workers' compensation market.

12 C. Voluntary market maintained. Beginning in
13 1991, the superintendent, after hearing and only
14 if the rates in the entire workers' compensation
15 market are inadequate to produce a reasonable
16 rate of return, shall determine as of November
17 15th of each year whether insurers have in good
18 faith made their best efforts to maximize the
19 number of risks in the voluntary market. If the
20 superintendent's determination is affirmative,
21 the surcharge in paragraph A shall be applied.

22 If the determination is negative, then the super-
23 intendent shall determine the percentage of
24 workers' compensation insurance, by premium vol-
25 ume, that has been written voluntarily statewide.
26 If the premium volume in the voluntary market is
27 greater than or equal to the amount specified in
28 the table below, then the surcharge in paragraph
29 A shall be applied.

30	<u>Policy Year</u>	<u>Premium Volume</u>
31	<u>1989</u>	<u>50%</u>
32	<u>1990</u>	<u>60%</u>
33	<u>1991 and later</u>	<u>70%</u>

34 If the superintendent determines that the percentage
35 of premium in the voluntary market is less than the
36 percentage in the table above, the deficit collecti-
37 ble from insured employers shall be reduced as fol-
38 lows: For each reduction of 5%, or part thereof, be-
39 low the required percentage, the total deficit amount
40 shall be reduced by 10% subject to a maximum reduc-
41 tion of 50% of the deficit.

1 3. Application of credit or surcharge. Credits
2 or surcharges ordered by the superintendent shall ap-
3 ply to policies issued or renewed during the calendar
4 year after the order of the superintendent is issued
5 or for such other period as the superintendent may
6 order.

7 4. Rules regarding distribution of deficit. The
8 superintendent shall promulgate rules which provide
9 for the equitable distribution among insurers of the
10 portion of any deficit not surcharged to insured em-
11 ployers, provided that the regulations shall give due
12 consideration to efforts by individual insurers to
13 underwrite risks in the voluntary market.

14 5. Review of market. The superintendent shall
15 review, on an annual basis, the operation of the en-
16 tire market to determine the effectiveness of section
17 2367. The superintendent may make such recommenda-
18 tions, on a prospective basis, to the joint standing
19 committee of the Legislature having jurisdiction over
20 insurance as he deems appropriate.

21 6. Report regarding self-insurers and other em-
22 ployers. The superintendent shall report to the
23 joint standing committee of the Legislature having
24 jurisdiction over insurance by January 30, 1989, re-
25 garding the feasibility of including self-insurers in
26 the payment of any deficit pursuant to subsection 2
27 and the feasibility of including or excluding certain
28 employers in the payment of any deficit for reasons
29 of fairness.

30 §2368. Safety groups

31 A safety group shall be an insured plan that pro-
32 vides for an alternative source of insurance for mem-
33 bers of an organization or association. An insurer
34 may issue a workers' compensation and employers' lia-
35 bility policy or policies insuring a safety group if
36 the following requirements are met.

37 1. Filings. The organization or association
38 shall file with the superintendent:

39 A. A copy of its articles of incorporation and
40 bylaws or its agreement of association and rules

1 governing the conduct of its business, all certi-
2 fied by the custodian of the originals;

3 B. An agreement that only members of the organi-
4 zation or association shall be eligible for in-
5 surance as a member of the group and that it will
6 notify its insurers within 10 days if any member
7 fails to remain a member in good standing in ac-
8 cordance with the standards and rules of the or-
9 ganization or association;

10 C. A description of the operation and makeup of
11 a safety committee which, by means of education
12 and otherwise, will seek to reduce the incidence
13 and severity of accidents or claims; and

14 D. If a group policy, an agreement in writing
15 duly executed guaranteeing that, if the insurer
16 notifies the safety group of the nonpayment of a
17 premium by an insured member within 60 days after
18 the premium was due, the safety group will pay to
19 the insurer the amount of any past due premium
20 which does not exceed the amount of the dividends
21 that are due the safety group or its members from
22 the insurer. The safety group shall promptly no-
23 tify the insurer of the known insolvency of any
24 member of the group and shall request, upon
25 learning of the insolvency, the removal of the
26 member from the group. A copy of the resolution
27 of the governing superintendent of the group au-
28 thorizing the execution of the guarantee agree-
29 ment shall be filed with the superintendent and
30 with the insurer issuing the group policy.

31 2. Advance premium discounts. Any advance pre-
32 mium discount for any new or existing safety group
33 shall be filed with the superintendent not later than
34 5 days after the effective date.

35 3. Management. The safety group shall designate
36 a person to act as the manager or authorized repre-
37 sentative of the group. The manager or representa-
38 tive may be remunerated by the members for expenses,
39 including all ordinary operating expenses of the
40 group, but in no instance shall the amount charged to
41 members exceed 10% of earned premiums.

1 4. Dividends. Dividends or returned premiums
2 paid or credited to a safety group shall be paid or
3 credited to the individual members of the group, ex-
4 cept that the indebtedness for any unpaid premium
5 shall be first deducted from any dividend or premium
6 returned.

7 5. Other requirements. Any safety group formed
8 or operating under this section shall be subject to
9 the requirements of sections 2931 to 2940, except
10 that the safety group or the insurer may establish
11 reasonable underwriting standards regarding eligibil-
12 ity for acceptance and continued membership of the
13 safety group. These underwriting standards shall be
14 filed with the superintendent and may be disapproved
15 by the superintendent if they unreasonably limit mem-
16 bership in the safety group.

17 §2369. Examinations

18 1. Examination. The superintendent may examine
19 an insurer, rating organization or advisory organiza-
20 tion as he deems necessary to ascertain compliance
21 with this subchapter.

22 2. Records. Every insurer, rating organization
23 and advisory organization shall maintain reasonable
24 records of the type and kind reasonably adapted to
25 its method of operation, containing its experience or
26 the experience of its members, including the data,
27 statistics or information collected or used by it in
28 its activities.

29 A. These records shall be available at all rea-
30 sonable times.

31 B. These records shall be maintained in an of-
32 fice within this State or shall be made available
33 to the superintendent at his office on reasonable
34 notice.

35 3. Cost. The reasonable cost of an examination
36 shall be paid by the examined party on presentation
37 of a detailed account of these costs.

38 4. Report. In lieu of an examination, the su-
39 perintendent may accept the report of an examination

1 by the insurance supervisory official of another
2 state, made pursuant to the laws of that state.

3 §2370. Report regarding report on unsafe work site

4 The Bureau of Insurance and the Department of Labor
5 shall study the feasibility of instituting a program
6 allowing an employee to report unsafe work conditions
7 to the Department of Labor in order to improve
8 safety. This report shall be made to the joint
9 standing committee of the Legislature having juris-
10 isdiction over insurance by January 30, 1988.

11 §2371. Statistical recording and reporting

12 1. Collection and reporting system. The statisti-
13 cal advisory organization designated pursuant to
14 section 2364, subsection 2 shall develop and file
15 with the superintendent a plan which will include a
16 comprehensive data collection and reporting system
17 for insurers. The superintendent shall designate an
18 organization to collect and report, to the extent ap-
19 licable, the data for self-insurers required by this
20 section. The purpose of the system is to permit the
21 superintendent, in a timely manner, to analyze insur-
22 ance rates and claims practices of insurers and
23 self-insurers.

24 2. Data collected. The data collection and re-
25 porting system shall contain, at a minimum, the fol-
26 lowing.

27 A. Basic information on each claim, including:

28 (1) Name, address and identification infor-
29 mation of the employee, employer and insurer
30 or self-insurer;

31 (2) File identification number or numbers,
32 insurance policy number, occupation and
33 classification codes;

34 (3) Date of hire, age of employee at injury
35 and employee's prior workers' compensation
36 claim history; and

37 (4) Attorney, if any, and date of involve-

1 ment.

2 B. Claim history information on each claim, in-
3 cluding:

4 (1) Date of injury or exposure to disease,
5 date of first report, type of injury or ex-
6 posure disclosure and affected body part;

7 (2) Preinjury wage history, date of initial
8 payment and date of notice of controversy,
9 if any, together with the reason for denial;

10 (3) Date of maximum medical improvement and
11 independent medical examiner finding or
12 findings;

13 (4) Identification of cumulative or re-
14 opened claims; and

15 (5) Duration of wage loss period or peri-
16 ods.

17 C. Information concerning Workers' Compensation
18 Commission proceedings, including:

19 (1) As to each informal conference, the
20 date; commissioner; attorney involvement, if
21 any, employer or insurer offer; employee ex-
22 pectation; and resolution, if any; and

23 (2) As to each hearing, the date, commis-
24 sioner, attorney involvement, employer or
25 insurer's offer, employee's demand and com-
26 missioner's decision.

27 D. Cost of payment information on each claim,
28 identified as open or closed, including:

29 (1) Payments to date to any physician, hos-
30 pital, medical rehabilitation provider or
31 other medical provider, together with a de-
32 scription of the services, name of the
33 provider and amount of payment;

34 (2) Payments made to date for weekly com-
35 ensation, impairment benefits, death bene-

1 fit, funeral expense, employee legal ex-
2 penditure, employer legal expense, lump sum,
3 witness fees, penalties, vocational rehabil-
4 itation services with a description of ser-
5 vices and name of rehabilitation provider
6 and any other type of payments under Title
7 39;

8 (3) With respect to open claims, an esti-
9 mate of outstanding liability, including an-
10 anticipated payments, separately stated, for
11 physician, hospital, other medical, weekly
12 compensation, impairment benefits, vocation-
13 al rehabilitation, employee legal expense,
14 employer legal expense, witness fees and any
15 other type of payment; and

16 (4) Identification, both on payments and
17 outstanding liabilities, of benefit offsets
18 for Social Security, unemployment insurance,
19 employer provided pension and any other
20 source.

21 3. Medical and health care expenses; system.
22 The statistical advisory organization shall create
23 and maintain a system to monitor charges for medical
24 fees, including hospital inpatient fees, hospital
25 outpatient fees and services performed by physicians,
26 dentists, podiatrists, chiropractors, psychologists,
27 psychiatrists and other medical practitioners whose
28 fees are covered under Title 39.

29 4. Other data collection systems. The statisti-
30 cal advisory organization may rely on data collected
31 and reported by other data gathering organizations or
32 agencies, such as the Workers' Compensation Commis-
33 sion or the Department of Labor. If the statistical
34 advisory organization is to incorporate data from
35 other sources it shall satisfy itself that the data
36 is sufficiently complete and accurate for the pur-
37 poses for which it is to be used. The Workers' Com-
38 penensation Commission and the Department of Labor
39 shall assist the statistical advisory organization in
40 the development and maintenance of a comprehensive
41 data base by recording and making available informa-
42 tion within the custody and control of each, respec-
43 tively, pursuant to the request of the statistical

1 advisory organization.

2 5. Compliance penalties. The statistical advis-
3 ory organization shall include as part of its plan a
4 means of monitoring member or subscriber compliance
5 with the reporting requirements and shall include a
6 schedule of monetary penalties for failure to comply
7 with reporting requirements.

8 6. Reports. Reports from members or subscribers
9 shall be made monthly to the statistical advisory or-
10 ganization and summary reports shall be made availa-
11 ble to the superintendent not later than 6 months
12 from the reporting date.

13 7. Rules. The superintendent shall have the au-
14 thority to promulgate reasonable rules with respect
15 to the recording and reporting of claim information,
16 including the recording and reporting of expense or
17 experience items which are not specifically applica-
18 ble to this State but require an allocation of expe-
19 rience or expenses to this State.

20 8. Confidentiality. Any report of information
21 relating to a particular claim shall be confidential
22 and shall not be revealed by the superintendent, ex-
23 cept that the superintendent may make compilations
24 including this experience. Any information provided
25 to the superintendent regarding self-insurance shall
26 be confidential to the extent protected by Title 39,
27 section 23, subsection 10.

28 9. Accuracy. The statistical advisory organiza-
29 tion shall take all reasonable steps to insure the
30 accuracy of the information provided to it and re-
31 ported by it.

32 10. Claims covered. This section shall apply to
33 all claims occurring on or after January 1, 1987.

34 §2372. Periodic profitability reports

35 1. Applicability. Each insurer with direct
36 written premium of 1% or more of the total workers'
37 compensation market shall submit a quarterly report,
38 as described in this section, to the superintendent.

1 2. Market share. For purposes of this section,
2 market share shall be determined using the combined
3 direct written premium of all authorized insurers under
4 common management or control or all affiliated
5 companies. For the quarters ending March 31st and
6 June 30th, the market share shall be determined using
7 direct written premium for the year prior to the im-
8 mediately preceding year. For the quarters ending
9 September 30th and December 31st, the market share
10 shall be determined using direct written premium for
11 the immediately preceding year.

12 3. Reports. Reports shall be submitted not la-
13 ter than 60 days following the close of a quarter.
14 The quarterly report shall contain the following:

15 A. Written premium;

16 B. Earned premium;

17 C. Paid losses;

18 D. Paid loss adjustment expenses;

19 E. Incurred losses;

20 F. Incurred loss adjustment expenses;

21 G. Paid underwriting expenses;

22 H. Incurred underwriting expenses;

23 I. Investment income allocable to the State
24 workers' compensation insurance for the quarter;

25 J. Losses outstanding;

26 K. Loss adjustment expenses outstanding; and

27 L. Dividend allowed or returned to policyhold-
28 ers.

29 4. Residual market report. On a quarterly basis
30 not later than 90 days following the end of a quar-
31 ter, the designated statistical advisory organization
32 shall submit to the superintendent a report contain-
33 ing the following information for the Safety Pool and

1 the Accident Prevention Account:

2 A. The number of policies issued;

3 B. The number of policies renewed;

4 C. The number of policies terminated;

5 D. Written premium;

6 E. Earned premium;

7 F. Paid losses;

8 G. Incurred losses; and

9 H. Assessments to members and subscribers to
10 cover pool operating gains or losses.

11 §2373. Penalty for violations

12 1. Civil penalties. A person or organization in
13 violation of this chapter shall be assessed by the
14 superintendent a civil penalty not more than \$1,000
15 for each violation, except that where a violation is
16 willful, a civil penalty of not more than \$10,000
17 shall be assessed for each violation. These penal-
18 ties may be in addition to any other penalty provided
19 by law.

20 2. Separate violation. For purposes of this
21 section, an insurer using a rate for which that in-
22 surer has failed to file the rate, supplementary rate
23 information or supporting information as required by
24 this subchapter, shall have committed a separate vio-
25 lation for each day that failure continues.

26 3. License. The license of an advisory organi-
27 zation, rating organization or insurer which fails to
28 comply with an order of the superintendent may be
29 suspended or revoked by the Administrative Court.

30 §2374. Public Advocate

31 1. Participation and duties. The Public Advo-
32 cate shall represent the interests of insureds and
33 policyholders in matters under this subchapter within

1 the jurisdiction of the superintendent, including,
2 but not limited to:

3 A. Rate filings, whether under section 2363 or
4 section 2366;

5 B. Rulemakings;

6 C. Petitions by insurers to terminate license
7 authority, or withdrawal plans submitted pursuant
8 to section 415-A;

9 D. Proceedings by the superintendent concerning
10 the reasonableness and adequacy of the service
11 provided by any insurer;

12 E. Proceedings by the superintendent concerning
13 the reasonableness and adequacy of the rates
14 charged by any insurer; and

15 F. Proceedings instituted by the superintendent
16 concerning an insurer's license authority.

17 The Public Advocate shall have the same right to re-
18 quest data as any other party before the superintend-
19 ent and may petition the superintendent, for good
20 cause shown, to be allowed such other information as
21 may be necessary to carry out the purposes of this
22 section.

23 2. Petition. The Public Advocate shall have the
24 right to request that the superintendent investigate
25 the reasonableness of the service provided by, or the
26 rates charged by, insurers.

27 3. Expert witnesses. The Public Advocate may
28 employ witnesses and pay appropriate compensation and
29 expenses to employ such witnesses. The funds there-
30 for shall be supplied as indicated in sections 2363
31 and 2366.

32 4. Appeal from superintendent's orders. The
33 Public Advocate has the same rights of appeal from
34 the superintendent's orders or decisions to which he
35 has been a party as other parties.

36 Sec. 5. 24-A MRSA §2908, sub-§2, as enacted by

1 PL 1985, c. 671, §1, is amended to read:

2 8. This section does not apply to any insurance
3 policy that has not been previously renewed if the
4 policy has been in effect less than 60 days at the
5 time notice of cancellation is mailed or otherwise
6 delivered. This section does not apply to any policy
7 subject to the Maine Automobile Insurance Cancellat-
8 ion Control Act, subchapter II. This section does
9 not apply to ~~workers' compensation insurance~~ or any
10 assigned risk program. The superintendent may sus-
11 pend, in whole or in part, the applicability of this
12 section to any insurer if, in his discretion, its ap-
13 plication will endanger the ability of the insurer to
14 fulfill its contractual obligations.

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

17 B. Any group of employers may adopt a plan for
18 self-insurance, as a group, for the payment of
19 compensation under this chapter to their employ-
20 ees. Under such plan the group shall assume the
21 liability of all the employers within the group
22 and pay all compensation for which the said em-
23 ployers are liable under this chapter. Where such
24 plan is adopted the group shall furnish satisfac-
25 tory proof to the superintendent of its financial
26 ability to pay such compensation for the employ-
27 ers in the group, its revenues, their source and
28 assurance of continuance. The superintendent
29 shall require the deposit with the Workers' Com-
30 pensation Commission of such securities as may be
31 deemed necessary of the kind prescribed in para-
32 graphs A B to E or the filing of a bond of a
33 surety company authorized to transact business in
34 this State, in an amount to be determined to se-
35 cure its liability to pay the compensation of
36 each employer as above provided in accordance
37 with paragraph E. Such surety bond must be ap-
38 proved as to form by the superintendent. The su-
39 perintendent may also require that any and all
40 agreements, contracts and other pertinent docu-
41 ments relating to the organization of the employ-
42 ers in the group shall be filed with him at the
43 time the application for group self-insurance is
44 made. Such application shall be on a form pre-

1 scribed by the superintendent. The superintendent
 2 shall have the authority to deny the application
 3 of the group to pay such compensation or to re-
 4 voke his consent furnished under this section at
 5 any time for good cause shown. For the purposes
 6 of this paragraph, "good cause" means the inability
 7 to pay, in a timely fashion, present and fu-
 8 ture compensation and other benefits for which
 9 employers are liable under this chapter. The su-
 10 perintendent shall approve or disapprove an ap-
 11 plication within 90 days. The group qualifying
 12 under this paragraph shall be known as a self-
 13 insurer.

14 **Sec. 7. Transition provision.** The rates, fil-
 15 ings and uniform plans in effect on the effective
 16 date of this Act shall continue in effect unless and
 17 until modified or suspended by actions taken pursuant
 18 to this Act. The residual market mechanisms previ-
 19 ously established pursuant to the Maine Revised Stat-
 20 utes, Title 24-A, section 2350, shall continue in ef-
 21 fect under section 6 of this Act and need not be re-
 22 established. The terms and conditions of this opera-
 23 tion shall continue in effect until superseded by
 24 rules adopted under this Act.

25 **Sec. 8. Allocation.** The following funds are al-
 26 located from Other Special Revenue Funds to carry out
 27 the purposes of this Act.

28	<u>1987-88</u>	<u>1988-89</u>
29 <u>PROFESSIONAL AND FINANCIAL</u>		
30 <u>REGULATIONS, DEPARTMENT OF</u>		
31 Bureau of Insurance		
32 All Other	\$ 75,000	\$ 75,000
33 Capital Expenditures	25,000	
34		
35 Total	<u>\$100,000</u>	<u>\$75,000</u>
36 Provides funds for		
37 consulting fees and		
38 data processing		
39 equipment.		

1 EXECUTIVE DEPARTMENT

2 Public Advocate

3 All Other \$100,000

4
5 Total \$100,000

6 Allocates funds to
7 defray the cost of
8 the Public Advo-
9 cate's involvement
10 in insurance rate
11 filings.

12
13 TOTAL ALLOCATIONS \$200,000 \$75,000

14 **Emergency clause.** In view of the emergency cited
15 in the preamble, this Act shall take effect when ap-
16 proved.

17 FISCAL NOTE

18 This bill will have the following effect on reve-
19 nues.

20 1987-88 1988-89
21 Other Special Revenue \$200,000 \$75,000

22 The Office of the Public Advocate will be able to
23 absorb the additional responsibilities associated
24 with its expanded intervention in the proceedings of
25 the Superintendent of Insurance within its existing
26 resources for the current biennium. These additional
27 responsibilities could require increased appropri-
28 ations from the General Fund in future bienniums.

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STATEMENT OF FACT

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This new draft incorporates the original bill and makes several substantive changes from the original bill as follows.

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1. The sections establishing a workers' compensation rating board have been deleted. Instead, the Superintendent of Insurance will set all rates for workers' compensation insurance. The Workers' Compensation Commission will set the schedule of medical service fees. A group consisting of the Director of the Bureau of Labor Standards, the Superintendent of Insurance and the Chairman of the Workers' Compensation Commission will evaluate the entire workers' compensation system and report annually to the Governor. All other duties assigned to the board in the original bill will be performed by the Superintendent of Insurance. These are responsibilities of the superintendent under current law.

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2. Insurers must notify the bureau 20 days prior to a rate filing instead of the 45-day requirement in current law and in the original bill, Title 24-A, section 2363, subsection 3.

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3. A new provision was added to Title 24-A, section 2363, subsection 3, to make restrictions on ex parte communications in Title 5, section 9055 apply beginning when the superintendent receives the notification of filing.

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4. The Public Advocate's ability to intervene has been expanded in this new draft. The Public Advocate, in current law and in the original bill, intervenes only in rate filings in the residual market. In this new draft, the Public Advocate must be a party in all rate filings in both the voluntary market and the residual market. A new section has been added which expands this authority to intervene to other proceedings in relation to workers' compensation insurance as well.

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5. Self-insurers will report data to a separate advisory organization designated by the superintendent, instead of to the same one as commercial insur-

1 ers.

2 6. The superintendent is required to make addi-
3 tional reports regarding the merit rating plan for
4 small employers, the bidding process for servicing
5 carriers and the feasibility of a program for report-
6 ing unsafe workplaces.

7 7. Mandatory deductibles are now required only
8 for certain employers in the accident prevention ac-
9 count. Mandatory deductibles apply to all employers
10 in the original bill.

11 8. A new provision has been added which allows
12 the superintendent to adopt rules for retrospective
13 rating plans for employers in the accident prevention
14 account who have serious safety violations. All
15 surcharges and extra premium provisions may not ex-
16 ceed 150% of standard premium.

17 9. A provision has been added to allow the su-
18 perintendent to award service contracts for the re-
19 sidual market to any organization if he finds that
20 insurers are unwilling to provide the service. This
21 section allows the superintendent to give considera-
22 tion to factors other than cost if such an award is
23 made.

24 10. A provision has been added that amends cur-
25 rent law regarding group self-insurers. Good cause
26 for denial of an application has been defined to mean
27 ability to pay claims. Additionally, the superin-
28 tendent will be required to act on applications with-
29 in 90 days.

30 11. A new section was added, Title 24-A, section
31 2367, which makes insured employers liable for losses
32 in the residual market. The operation of this provi-
33 sion, however, is dependent on whether the rate of
34 return of insurers is adequate and on whether the
35 voluntary market is working according to a defined
36 schedule.

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