

# MAINE STATE LEGISLATURE

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(Emergency)  
SECOND SPECIAL SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

No. 1929

S.P. 704 In Senate, November 19, 1987  
Approved for Introduction by a Majority of the Legislative  
Council pursuant to Joint Rule 26.

Reference to the Committee on Banking and Insurance  
suggested and ordered printed.

JOY J. O'BRIEN, Secretary of the Senate

Presented by Senator THERIAULT of Aroostook.

Cosponsored by Representative RYDELL of Brunswick, Senator  
COLLINS of Aroostook, Representative WEBSTER of Cape Elizabeth.

STATE OF MAINE

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

1 AN ACT to Revise the Procedure by which  
2 Insurance Rates are Established under  
3 the Maine Workers' Compensation Act.  
4

5 Emergency preamble. Whereas, Acts of the Legisla-  
6 ture do not become effective until 90 days after ad-  
7 journment unless enacted as emergencies; and

8 Whereas, there is a statutory requirement that  
9 all employers in the State provide workers' compensa-  
10 tion coverage; and

11 Whereas, most, if not all, of the insurance car-  
12 riers writing such workers' compensation insurance in  
13 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14           Sec. 1. 24-A MRSA §2302, sub-§3, as repealed and  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 ~~FF~~ 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-B7-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           riized 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 gov-  
43 erning submission of petitions for intervenor status,  
44 prefiling of testimony and exhibits, information re-

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

3 14. Costs. For the purpose of determining whether  
4 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 ordinary methods because of their demonstrated ac-  
36 cident 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 ex-  
26          pired, 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 report  
4 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 noti-  
23 fy 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 ice 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 La-  
5 bor shall study the feasibility of instituting a pro-  
6 gram allowing an employee to report unsafe work con-  
7 ditions to the Department of Labor in order to im-  
8 prove 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 statist-  
13 tical 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 plicable, 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 pende, 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 ticipated 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 pensation 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 un-  
4 der 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 lar-  
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-§8, 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 Cancell-  
8 ation 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 E 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 future  
 8 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 bill incorporates several provisions contained in L.D. 1917 with several substantive changes as follows.

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1. The sections from L.D. 1917 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 L.D. 1917 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.

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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 bill. The Public Advocate, in current law and in L.D. 1917, intervenes only in rate filings in the residual market. In this bill, 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 insurers.

