

MAINE STATE LEGISLATURE

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114th MAINE LEGISLATURE

FIRST REGULAR SESSION - 1989

Legislative Document

No. 1563

S.P. 560

In Senate, May 9, 1989

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

A handwritten signature in cursive script that reads "Joy J. O'Brien".

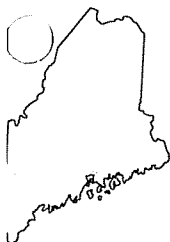
JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator BUSTIN of Kennebec.

STATE OF MAINE

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

An Act to Reform the Workers' Compensation Insurance Rate-making Process.



1 **Be it enacted by the People of the State of Maine as follows:**

3 **Sec. 1. 24-A MRSA §236, sub-§1,** as repealed and replaced by PL
1977, c. 694, §397, is repealed.

5 **Sec. 2. 24-A MRSA §236, sub-§§8 and 9,** as repealed and replaced
7 by PL 1977, c. 694, §397, are repealed and the following enacted
in their place:

9 8. If the appeal is from the superintendent's order on
11 hearing, the review of the court shall be de novo, except as
13 otherwise stipulated by the parties. The court shall have power,
15 by preliminary order, to settle questions concerning the
completeness and accuracy of the superintendent's official record.

17 9. In its discretion, the court may remand the case to the
19 superintendent for further proceedings in accordance with the
21 court's directions or, in advance of judgment and upon a
sufficient showing the court may remand the case to the
superintendent for the purpose of taking additional testimony or
other proceedings.

23 **Sec. 3. 24-A MRSA §2363, sub-§§2-A and 2-B** are enacted to read:

25 2-A. Ex parte communications. The following restrictions
27 on communication shall apply.

29 A. Notwithstanding Title 5, section 9055, the
31 superintendent, bureau employees authorized to take final
33 action and presiding officers designated by the
35 superintendent to make findings of fact and conclusions of
37 law shall not communicate directly or indirectly in
39 connection with any issue of fact, law or procedure with any
41 person legally interested in the determination of workers'
compensation insurance rates, except upon notice and
opportunity for all interested persons to participate. For
purposes of this paragraph, "legally interested persons"
include workers' compensation insurers, statistical advisory
organizations and others having a direct or indirect
interest in the determination of workers' compensation
insurance rates.

43 B. This subsection shall not prohibit the superintendent,
45 bureau employees or other presiding officers described in
paragraph A from:

47 (1) Communicating in any respect with other members of
49 the bureau or other presiding officers; or

51 (2) Having the aid or advice of those members of the
bureau staff, counsel or consultants retained by the

1 bureau who have not participated and will not
2 participate in an adjudicatory proceeding in an
3 advocate capacity.

4 2-B. Communications logged. The Bureau of Insurance shall
5 maintain and make available for public inspection a log showing
6 all communications between any insurer representative and the
7 superintendent, the deputy superintendent or counsel for the
8 bureau.

9 **Sec. 4. 24-A MRSA §2363, sub-§3,** as enacted by PL 1987, c.
10 559, Pt. A, §4, is amended to read:

11 3. Notice of filing. At least 20 days prior to any filing
12 for rates under this section, a person filing shall notify the
13 superintendent in writing of the intention to file and shall
14 disclose the approximate amount of a requested increase or
15 decrease and a description of major rating rule changes to be
16 proposed. Within 10 days of receipt, the superintendent shall
17 notify the public by publication in a newspaper of general
18 circulation and notify the Public Advocate that a rate filing is
19 to be made. ~~Restrictions on ex parte communications, as provided~~
20 ~~for in Title 5, section 9055, shall be applicable on the date the~~
21 ~~superintendent receives the notice of intention to file.~~

22 **Sec. 5. 24-A MRSA §2363, sub-§4, ¶¶D and E,** as enacted by PL
23 1987, c. 559, Pt. A, §4, are amended to read:

24 D. Statements or exhibits that reasonably substantiate
25 assumptions, methodology or calculations used in support of
26 the proposed rates or to generate the information or data in
27 the filing and identification of any of those that are known
28 or believed to be contrary to established policy of the
29 superintendent; and

30 E. Any other information required to be included by the
31 superintendent; and

32 **Sec. 6. 24-A MRSA §2363, sub-§4, ¶F** is enacted to read:

33 F. For insurers that provide at least 5% of the workers'
34 compensation insurance in the State, specific company data
35 on annual expenses, annual losses, loss adjustment expenses
36 and loss experience.

37 **Sec. 7. 24-A MRSA §2363, sub-§7, ¶B,** as enacted by PL 1987, c.
38 559, Pt. A, §4, is amended to read:

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

- 1 (1) The reasonableness of any return on capital and
3 surplus allocable to the coverage of risks in this
State;
- 5 (2) The reasonableness of the amounts of capital and
7 surplus allocable to the coverage of risks in this
State;
- 9 (3) The reported investment income earned or realized
11 from funds generated from business in this State;
- 13 (4) The reported loss reserves, including the methods
15 and the interest rates used in determining the present
value for reported reserves and the use of those
reserves in the determination of the proposed rates;
- 17 (5) The reported annual losses and loss adjustment
19 expenses;
- 21 (6) The measures taken to contain costs, including
23 loss control, loss adjustment and employee safety
engineering programs;
- 25 (7) The relationship of the aggregate amount of
27 operating expenses reported by all companies to the
annual operating expenses reported in the filing and
the annual insurance expense exhibits filed by each
company with the superintendent;
- 29 (8) The impact of operating and management ~~efficiency~~
31 efficiency of the companies on expense levels and the
effect of variations in expense levels on rates; and
- 33 (9) Any premium surcharges or credits ordered by the
35 superintendent pursuant to section 2367-; and
- 37 (10) The specific company data reported by insurers
39 pursuant to subsection 4, paragraph F.

41 **Sec. 8. 24-A MRSA §2363, sub-§7, ¶B-1 is enacted to read:**

43 B-1. In establishing just and reasonable rates, the
superintendent shall not consider as a basis for comparison:

- 45 (1) Information from companies that have withdrawn
47 from writing insurance in the State; and
- 49 (2) Information from companies that write insurance in
the State, but whose underwriting and claims processing
51 standards are not in conformance with generally
accepted industry standards.

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STATEMENT OF FACT

This bill amends certain aspects of the workers' compensation insurance rate-making process.

Sections 1 and 2 of the bill repeal the laws prohibiting the reviewing court from substituting its judgment for that of the superintendent on questions of fact, and establishes that the court's review on appeal from the superintendent's order on hearing shall be de novo.

Section 3 expands the existing prohibition against ex parte contracts to apply whether or not an adjudicatory case is pending. Section 3 also requires that a log be maintained and made available to the public of all communications between insurer representatives and the superintendent, deputy superintendent or counsel for the bureau.

Section 4 removes the currently existing restriction on ex parte communications.

Section 6 provides that insurers that provide at least 5% of the workers' compensation insurance in the State shall file specific company data on expenses and losses. Section 7 requires that this specific company data be considered by the commissioner in establishing rates.

Section 8 prohibits the superintendent from considering information from companies that have withdrawn from writing insurance in the State and information from companies whose underwriting and claims processing standards are not in conformance with industry standards.