

# MAINE STATE LEGISLATURE

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# 114th MAINE LEGISLATURE

## SECOND REGULAR SESSION - 1990

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Legislative Document

No. 2249

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H.P. 1627

House of Representatives, January 29, 1990

Submitted by the Department of Professional and Financial Regulation pursuant to Joint Rule 24.

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

A handwritten signature in cursive script that reads "Ed Pert".

EDWIN H. PERT, Clerk

Presented by Representative CURRAN of Westbrook.

Cosponsored by Representative RYDELL of Brunswick, Senator COLLINS of Aroostook and Senator THERIAULT of Aroostook.

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STATE OF MAINE

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IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND NINETY

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**An Act to Limit the Role of Rating Organizations in Property and  
Casualty Rate Making.**

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

2  
4       Sec. 1. 24-A MRSA §2301, as amended by PL 1977, c. 694, §415,  
is further amended to read:

6       **§2301. Purpose of chapter; interpretation**

8       The purpose of this chapter is to promote the public welfare  
9 by regulating insurance rates, in accordance with the intent of  
10 Congress as expressed in Public Law 15 -- 79th Congress, to the  
11 end that they shall not be excessive, inadequate or unfairly  
12 discriminatory, and to authorize and regulate limited cooperative  
13 action among insurers in ~~rate--making~~ rate-making related  
14 activities and in other matters within the scope of this chapter.  
15 Nothing in this chapter is intended to prohibit or discourage  
16 reasonable competition, or to prohibit, or encourage except to  
17 the extent necessary to accomplish the aforementioned purpose,  
18 uniformity in ~~insurance--rates,~~ rating systems, rating plans or  
19 practices. This chapter shall be liberally interpreted to carry  
20 into effect this section. Unless otherwise specified, all  
21 hearings held under this chapter shall be in accordance with the  
22 procedures set forth in the Maine Administrative Procedure Act,  
23 Title 5, chapter 375, subchapter IV.

24       Sec. 2. 24-A MRSA §2302-A is enacted to read:

26       **§2302-A. Definitions**

28       As used in this chapter, unless the context otherwise  
29 indicates, the following terms have the following meanings.

30       1. "Commercial lines" means any line of insurance that is  
31 not a personal line.

32       2. "Developed losses" means losses, including loss  
33 adjustment expenses, adjusted, using standard actuarial  
34 techniques, to eliminate the effect of differences between  
35 current payment or reserve estimates and those needed to provide  
36 actual ultimate loss and loss adjustment expense payments.

37       3. "Expense" means that portion of a rate attributable to  
38 acquisition, field supervision and collection expenses; general  
39 expenses; and taxes, licenses and fees.

40       4. "Loss trending" means any procedure for projecting  
41 developed losses to the average date of loss for the period  
42 during which the policies are to be effective.

43       5. "Personal lines" means homeowners, tenants, private  
44 passenger nonfleet automobiles, mobile homes and other property  
45 and casualty insurance for personal, family or household needs.

2       6. "Prospective loss costs" means that portion of a rate  
4       that does not include provisions for expenses, other than loss  
6       adjustment expenses, or profit, and is based on historical  
8       aggregate losses and loss adjustment expenses adjusted through  
10       development to their ultimate value and projected through  
12       trending to a future point in time.

14       7. "Rate" means the cost of insurance per exposure unit,  
16       whether expressed as a single number or as a prospective loss  
18       cost with an adjustment to account for the treatment of expenses,  
20       profit, and individual insurer variation in loss experience,  
22       prior to any application of individual risk variation based on  
24       loss or expense considerations, and not including minimum premium.

26       8. "Supplementary rating information" means any manual or  
28       plan of rates, classification rating schedule, minimum premium,  
30       policy fee, rating rule, underwriting rule, statistical plan and  
32       any other similar information needed to determine the applicable  
34       rate in effect or to be in effect.

36       9. "Supporting information" means:

38       A. The experience and judgment of the filer and the  
40       experience or data of other insurers or advisory  
42       organizations relied upon by the filer;

44       B. The interpretation of any other data relied upon by the  
46       filer; and

48       C. Descriptions of methods used in making rates, and any  
50       other information required by the superintendent to be filed.

**Sec. 3. 24-A MRSA §2303, sub-§1, ¶¶D and E, as enacted by PL**  
1969, c. 132, §1, are repealed.

**Sec. 4. 24-A MRSA §2303, sub-§1, ¶¶G to I are enacted to read:**

G. Risks may be grouped by classifications for the  
      establishment of rates and minimum premiums. Classification  
      rates may be modified to produce rates for individual risks  
      in accordance with rating plans that establish standards for  
      measuring variations in hazards or expense provisions, or  
      both. These standards may measure any differences among  
      risks that may have a probable effect upon losses or  
      expenses. No risk classification may be based upon race,  
      creed, national origin or the religion of the insured.

H. The expense provisions included in the rates to be used  
      by an insurer must reflect the operating methods of the  
      insurer and its anticipated expenses.

2 I. Rates may contain a provision for contingencies and an  
3 allowance permitting a reasonable profit. In determining  
4 the reasonableness of the profit allowance, consideration  
5 must be given to investment income.

6 **Sec. 5. 24-A MRSA §2303, sub-§3, as enacted by PL 1969, c.**  
7 **132, §1, is repealed.**

8 **Sec. 6. 24-A MRSA §2303, sub-§3-A is enacted to read:**

9 3-A. Rates made in accordance with this section may be used  
10 subject to this chapter.

11 **Sec. 7. 24-A MRSA §2304, as amended by PL 1989, c. 192, §1,**  
12 **is repealed.**

13 **Sec. 8. 24-A MRSA §§2304-A and 2304-B are enacted to read:**

14 **§2304-A. Rate filings**

15 1. Every insurer shall file with the superintendent, except  
16 as to inland marine risks which by general custom of the business  
17 are not written according to manual rates or rating plans, every  
18 manual rate, minimum premium, class rate, rating schedule or  
19 rating plan and every other rating rule, and every modification  
20 of any of the foregoing which it proposes to use. Every such  
21 filing must state the effective date of the filing, and indicate  
22 the character and extent of the coverage contemplated. Every such  
23 filing must be made not less than 30 days in advance of the  
24 stated effective date unless that 30-day requirement is waived by  
25 the superintendent. The effective date may be suspended by the  
26 superintendent for a period of time not to exceed 60 days.

27 2. Every insurer must file or incorporate by reference  
28 material that has been approved by the superintendent at the time  
29 rates are filed, including all supplementary rating, and  
30 supporting information to be used in support of or in conjunction  
31 with a rate. The information furnished in support of a filing  
32 may include or reference:

33 A. The experience or judgment of the insurer or information  
34 filed by an advisory organization on behalf of the insurer  
35 as permitted by sections 2321-D and 2321-E;

36 B. The insurer's interpretation of any statistical data  
37 upon which it relies;

38 C. The experience of other insurers or advisory  
39 organizations; or

40 D. Any other relevant factors.

2           3. An advisory organization filing of prospective loss  
3 costs and supplementary rating information must be filed for  
4 approval at least 60 days before it becomes effective. This  
5 period may be extended by the superintendent for an additional  
6 period not to exceed 60 days if written notice is given to the  
7 advisory organization that additional time is needed for the  
8 consideration of the filing. Upon written application by the  
9 advisory organization, the superintendent may authorize a filing  
10 that has been reviewed to become effective before the expiration  
11 of the waiting period or any extension of the waiting period. A  
12 filing is deemed to meet the requirements of this chapter unless  
13 disapproved by the superintendent within the waiting period or  
14 any extension of the waiting period.

15           If the superintendent has requested the advisory organization to  
16 furnish the information upon which it supports that filing, the  
17 waiting period commences as of the date that information is  
18 furnished.

19           4. When a filing is not accompanied by the information upon  
20 which the insurer supports that filing, the superintendent may  
21 require the insurer to furnish the information upon which it  
22 supports the filing.

23           Any filing may be supported by the experience, or judgment if  
24 experience is not available, of the insurer or advisory  
25 organization making the filing, the experience of other insurers  
26 or advisory organizations or any other factors that the insurer  
27 or advisory organization determines relevant. A filing and any  
28 other supporting information is open to public inspection after  
29 the filing becomes effective.

30           5. Specific inland marine rates on risks specially rated,  
31 made by an advisory organization, must be filed with the  
32 superintendent, become effective when filed, and are deemed  
33 approved and in compliance with the requirements of this chapter  
34 until the superintendent rejects the filing.

35           6. Filings of rates to be utilized in connection with one  
36 or more mass marketing plans as defined in section 2932 must  
37 clearly identify their applicability to those plans.

38           7. A rate filing and its supporting data are confidential  
39 until the filing becomes effective.

40           8. Nothing in this chapter requires an advisory  
41 organization or its members or subscribers immediately to refile  
42 final rates or premium charges previously approved or lawfully in  
43 effect. Members or subscribers of an advisory organization are  
44 authorized to continue to use rates or premium charges approved  
45 or lawfully in effect before the effective date of this chapter.

2  
3 **§2304-B. Reference filings**

4 1. An insurer may satisfy its obligations to make rate  
5 filings by becoming a participating insurer of a licensed  
6 advisory organization that makes reference filings of advisory  
7 prospective loss costs and by authorizing the superintendent to  
8 accept reference filings on its behalf. The insurer's rates are  
9 the prospective loss costs filed by the advisory organization  
10 that have been approved in accordance with section 2321-E  
11 combined with the modifications and expense and profit factors  
12 filed by the insurer.

13 2. An insurer may request that its expense and profit  
14 factors and its loss cost modifications remain on file with the  
15 superintendent. Upon approval of an advisory organization loss  
16 cost reference filing, the insurer's rates are the combination of  
17 the approved prospective loss costs and the insurer's expense and  
18 profit factors and its loss cost modification filed with the  
19 superintendent.

20 3. If an insurer has authorized an advisory organization to  
21 file prospective loss cost information on its behalf, the insurer  
22 must make a filing with the superintendent pursuant to section  
23 2304-A if it intends to delay, modify or in any way not adopt an  
24 approved loss cost filing.

25 4. An insurer's expense and profit factors and loss cost  
26 modifications must remain in effect until the insurer withdraws  
27 or refiles new factors pursuant to section 2304-A. The  
28 superintendent may request that an insurer provide supporting  
29 information for the filed expense and profit factors and loss  
30 cost modifications at any time.

31 **Sec. 9. 24-A MRS §2305**, as amended by PL 1973, c. 585, §12,  
32 is further amended to read:

33 **§2305. Exemption from filing**

34 Under such rules and regulations as he--adepts may be  
35 adopted, the superintendent may, by written order, suspend or  
36 modify the requirement of filing as to any kind of insurance,  
37 subdivision or combination thereof, or as to classes of risks,  
38 the rates for which cannot practicably be filed before they are  
39 used. Such orders, rules and regulations shall be made known to  
40 insurers and rating advisory organizations affected thereby. The  
41 superintendent may make such examination as he--deems determined  
42 advisable to ascertain whether any rates affected by such order  
43 meet the standards set forth in section 2303, subsection 1,  
44 paragraph B.

45 **Sec. 10. 24-A MRS §2306, sub-§1**, as amended by PL 1973, c.  
46 585, §12, is further amended to read:

2 1. If at any time the superintendent has reason to believe  
4 that a filing does not meet the requirements of this chapter, or  
violates any of the provisions of chapter 23, he the  
6 superintendent shall, after a hearing held upon not less than 10  
days' written notice, specifying the matters to be considered at  
8 such hearing, to every insurer and ~~rating~~ advisory organization  
which made such filing, issue an order specifying in what  
10 respects he the superintendent finds that such filing fails to  
meet the requirements of this chapter, and stating when, within a  
12 reasonable period thereafter, such filing shall be deemed no  
longer effective. Copies of the order shall be sent to every such  
14 insurer and ~~rating~~ advisory organization. The order shall not  
affect any contract or policy made or issued prior to the  
16 expiration of the period set forth in the order.

18 **Sec. 11. 24-A MRSA §2308, sub-§1, ¶A, as enacted by PL 1987,  
c. 337, is amended to read:**

20 A. The insured insurer files a written application with the  
22 superintendent signed by the insured or applicant stating  
the reasons for the request.

24 **Sec. 12. 24-A MRSA §2309, as amended by PL 1973, c. 585, §12,  
is further amended to read:**

26 **§2309. Rating organizations -- workers' compensation filings**  
28 **for members and subscribers authorized**

30 An insurer may satisfy its obligation to make workers'  
32 compensation filings required by ~~section-2304~~ sections 2304-A and  
34 2363 by becoming a member of, or a subscriber to, a licensed  
rating organization which makes such filings, and by authorizing  
36 the superintendent to accept such filings on its behalf. Nothing  
contained in this chapter shall be construed as requiring any  
insurer to become a member of or a subscriber to any rating  
organization.

38 **Sec. 13. 24-A MRSA §2310, as amended by PL 1977, c. 694,  
40 §§416 and 417, is further amended to read:**

42 **§2310. Workers' compensation rating organizations -- licensing**

44 1. No rating organization shall make or file rates for  
46 risks located in this State without first being licensed therefor  
under this chapter.

48 2. A corporation, an unincorporated association, a  
50 partnership or an individual, whether located within or outside  
this State, may make application to the superintendent for  
52 license as a workers' compensation rating organization ~~for such~~  
~~kinds of insurance, or subdivision or class of risk or a part of~~



2 combination thereof as are specified in its application, and shall file therewith with the superintendent as applicable:

4 A. A certified copy of its constitution, its articles of  
6 agreement or association, or its certificate of  
incorporation, and of its bylaws, rules and regulations  
governing the conduct of its business;

8 B. A certified list of its members and subscribers;

10 C. The name and address of a resident of this State upon  
12 whom notices or orders of the superintendent or process  
affecting such rating organization may be served;

14 D. A statement of its qualifications as a rating  
16 organization; and

18 E. A power of attorney appointing the superintendent to be  
20 the true and lawful attorney of such organization in and for  
this State, upon whom all lawful process in any action or  
22 proceeding against the organization, other than an action or  
proceeding instituted by the superintendent, may be served  
24 in the same manner as service of process on insurers under  
section 422.

26 3. If the superintendent finds that the applicant is  
competent, trustworthy and otherwise qualified to act as a  
28 workers' compensation rating organization and that its  
constitution, articles of agreement or association or certificate  
30 of incorporation, and its bylaws, rules and regulations governing  
the conduct of its business conform to the requirements of law,  
32 he the superintendent shall ~~issue a license specifying the kinds  
of insurance, or subdivision or class of risk or part or  
34 combination thereof for which the applicant is authorized to act  
as a rating organization~~ the rating organization. At the time of  
36 issuance of such license, the superintendent shall establish a  
biennial continuation date for the purpose of biennial  
38 continuation of the license in force. Every such application  
shall be granted or denied in whole or in part by the  
40 superintendent within 60 days after the same application has been  
filed with him.

42 4. Licenses issued pursuant to this section shall remain in  
44 effect until midnight of the biennial continuation date and  
thereafter may be continued biennially unless the Administrative  
46 Court suspends or revokes the licenses following a complaint  
filed by the superintendent. The fee for the license and for each  
48 biennial continuation thereof shall be as specified in section  
601, fee schedule.

50 5. The superintendent may file a complaint with the  
52 Administrative Court seeking the suspension or revocation of

licenses issued pursuant to this section in the event any rating organization ceases to meet the requirements of this section.

Sec. 14. 24-A MRSA §2311, as amended by PL 1973, c. 585, §12, is further amended to read:

**§2311. Subscribers to workers' compensation rating organizations**

1. Subject to rules and regulations which have been approved by the superintendent as reasonable, each workers' compensation rating organization shall permit any insurer to be a subscriber to its rating service for any kind of insurance, subdivision, or class of risk or a part or combination thereof for which it is authorized to act as a rating organization. Notice of proposed changes in such rules and regulations shall be given to subscribers. Each rating organization shall furnish its rating services without discrimination to its subscribers.

2. The reasonableness of any rule or regulation in its application to subscribers, or the refusal of any rating organization to admit an insurer as a subscriber, shall, at the request of any subscriber or any such insurer, be reviewed by the superintendent at a hearing held upon at least 10 days' written notice to such rating organization and to such subscriber or insurer. If the superintendent finds that such rule or regulation is unreasonable in its application to subscribers, he the superintendent shall order that such rule or regulation shall not be applicable to subscribers. If the rating organization fails to grant or reject an insurer's application for subscribership within 30 days after it was made, the insurer may request a review by the superintendent as if the application had been rejected. If the superintendent finds that the insurer has been refused admittance to the rating organization as a subscriber without justification, he the superintendent shall order the rating organization to admit the insurer as a subscriber. If he the superintendent finds that the action of the rating organization was justified, he the superintendent shall make an order affirming its action.

Sec. 15. 24-A MRSA §2312, as amended by PL 1973, c. 585, §12, is further amended to read:

**§2312. Notice of changes**

Every workers' compensation rating organization shall notify the superintendent promptly of every change in its constitution, its articles of agreement or association, or its certificate of incorporation, and its bylaws, rules and regulations governing the conduct of its business, its list of members and subscribers, and the name and address of the resident of this State designated by it upon whom notices or orders of the superintendent or process affecting such rating organization may be served.

2           **Sec. 16. 24-A MRSA §§2313 and 2314**, as enacted by PL 1969, c.  
3 132, §1, are amended to read:

4           **§2313. Rules not to affect dividends**

6           No workers' compensation rating organization shall adopt any  
7 rule the effect of which would be to prohibit or regulate the  
8 payment of dividends, savings or unabsorbed premium deposits  
9 allowed or returned by insurers to their policyholders, members  
10 or subscribers.

12           **§2314. Technical services**

14           Any workers' compensation rating organization may subscribe  
15 for or purchase actuarial, technical or other services, and such  
16 services shall be available to all subscribers without  
17 discrimination.

18           **Sec. 17. 24-A MRSA §2315**, as amended by PL 1973, c. 585, §12,  
19 is further amended to read:

22           **§2315. Stamping bureau**

24           Any fire insurance rating advisory organization may provide  
25 for the examination of its members' and subscribers' policies,  
26 daily reports, binders, renewal certificates, endorsements or  
27 other evidences of insurance, or the cancellation thereof, and  
28 may make reasonable rules governing their submission. Such rules  
29 shall contain a provision that in the event any insurer does not  
30 within 60 days furnish satisfactory evidence to the rating  
31 advisory organization of the correction of any error or omission  
32 previously called to its attention by the rating advisory  
33 organization, the rating advisory organization shall notify the  
34 superintendent thereof. All information so submitted for  
35 examination shall be confidential.

38           **Sec. 18. 24-A MRSA §2317**, as amended by PL 1983, c. 551, §2,  
39 is repealed.

42           **Sec. 19. 24-A MRSA §2318**, as amended by PL 1973, c. 585, §12,  
43 is repealed.

44           **Sec. 20. 24-A MRSA §2319**, as amended by PL 1989, c. 467, §1,  
45 is further amended to read:

46           **§2319. Appeal by insureds as to filings**

48           1. Any ~~person or organization in interest~~ insured aggrieved  
49 with respect to any filing, rate, expense or premium level which  
50 is in effect may make written application to the superintendent  
51 for a hearing thereon, ~~except that the insurer or rating~~

~~organization that made the filing shall not be authorized to~~  
2 ~~proceed under this section.~~ Any The application shall specify the  
4 grounds to be relied upon by the applicant in asserting that the  
filing, rate, expense or premium level is unjust or  
6 unreasonable. The Public Advocate, as appointed under Title  
35-A, section 1701, may file a written application under this  
8 section only with respect to workers' compensation filings,  
rates, expenses or premium levels, provided that:

10 A. Application is made only on behalf of the general body  
of workers' compensation policyholders, not on behalf of  
12 individual policyholders; and

14 B. No filing is made by the Public Advocate earlier than  
180 days from the expiration of the period for appealing a  
16 rate filing under section 236.

18 2. If the superintendent finds that the application is made  
in good faith, that the applicant would be so aggrieved if the  
20 applicant's grounds were established, and that such grounds  
otherwise justify holding such a hearing, the superintendent  
22 shall, by written order, require that the insurer or rating  
organization prepare within 30 days a responsive filing  
24 containing information necessary, in the judgment of the  
superintendent, to review the application. This For workers'  
26 compensation filings, this responsive filing may include all  
information required pursuant to section 2363, subsections 4 and  
28 5 and such additional information as the superintendent may  
require pursuant to section 2363, subsection 6.

30 A. A copy of the superintendent's written order requiring a  
32 responsive filing and specifying its contents or determining  
that no further action on the application is warranted shall  
34 be provided to the Public Advocate when the application  
concerns workers' compensation policies or rates and to the  
36 person or organization making the application for relief  
under subsection 1.

38 B. A copy of the responsive filing shall be served on the  
40 Public Advocate when the application concerns workers'  
compensation policies or rates and on the applicant. Upon  
42 receipt of an order from the superintendent requiring a  
responsive filing concerning workers' compensation which  
44 resulted from an application by the Public Advocate, the  
insurer or rating organization shall pay to the  
46 superintendent a filing fee of \$50,000 which the  
superintendent shall immediately credit to the Public  
48 Advocate. The fee shall be segregated and expended for  
employing outside consultants and paying other expenses to  
50 fulfill the requirements of this section. Any portion of  
the fee not expended shall be returned to the filer.

52

2 C. The public hearing shall be conducted no fewer than 30  
4 days and no more than 60 days from the date the responsive  
6 filing is determined complete by the superintendent, unless  
8 the superintendent extends these limits pursuant to section  
10 2363, subsection 6 in workers' compensation cases.

12 3. If, after such a hearing, the superintendent finds that  
14 the filing, rate, expense or premium level does not meet the  
16 requirements of this chapter, the superintendent shall issue a  
18 final order specifying in what respects the superintendent finds  
20 that the filing fails to meet the requirements of this chapter,  
22 or is unjust and unreasonable, and stating when, within a  
24 reasonable period thereafter, the filing, rate, expense or  
premium level shall be changed, replaced or determined no longer  
effective. Copies of the order shall be sent to the applicant and  
to every insurer and rating or advisory organization. The order  
shall not affect any contract or policy made or issued prior to  
the expiration of the period set forth in the order.

20 **Sec. 21. 24-A MRSA §2320**, as amended by PL 1973, c. 585, §12,  
22 is further amended to read:

24 **§2320. Information furnished insureds; hearings and  
26 appeals of insureds**

28 1. Every rating organization, advisory organization and  
30 every insurer ~~which makes its own rates~~ shall, within a  
32 reasonable time after receiving written request therefor and upon  
34 payment of such reasonable charge as it may make, furnish to any  
insured affected by a rate, a prospective loss cost or  
supplementary rating information made by it, or to the authorized  
representative of such insured, all pertinent information as to  
such rate.

36 2. Every rating organization, advisory organization and  
38 every insurer ~~which makes its own rates~~ shall provide within this  
40 State reasonable means whereby any person aggrieved by the  
42 application of its rating system may be heard, in person or by  
44 his through an authorized representative, on his written request  
46 to review the manner in which such rating system has been applied  
48 in connection with the insurance afforded him that person. If the  
50 rating organization, advisory organization or insurer fails to  
52 grant or reject such request within 30 days after it is made, the  
applicant may proceed in the same manner as if his that  
application had been rejected. Any party affected by the action  
of such rating organization, advisory organization or such  
insurer on such request may, within 30 days after written notice  
of such action, appeal to the superintendent, who, after a  
hearing held upon not less than 10 days' written notice to the  
appellant and to such rating organization, advisory organization  
or insurer, may affirm or reverse such action.

2           Sec. 22. 24-A MRSA §2321, as amended by PL 1973, c. 585, §12,  
is repealed.

4           Sec. 23. 24-A MRSA §§2321-A to 2321-E are enacted to read:

6           §2321-A. Licensing advisory organizations

8           1. No advisory organization may provide any service  
10 relating to the rates of any insurance subject to this chapter,  
and no insurer may utilize the services of that organization for  
12 those purposes unless the organization has obtained a license  
under subsection 3, paragraph C.

14           2. No advisory organization may refuse to supply any  
16 services for which it is licensed in this State to any insurer  
authorized to do business in this State and offering to pay the  
18 fair and usual compensation for the services.

20           3. The licensing of advisory organizations is governed by  
the following.

22           A. An advisory organization's application for a license  
24 must include:

26                   (1) A copy of its constitution, charter, articles of  
28 organization, agreement, association or incorporation,  
and a copy of its bylaws, plan of operation and any  
30 other rules or regulations governing the conduct of its  
business;

32                   (2) A list of its members and subscribers;

34                   (3) The name and address of one or more residents of  
this State upon whom notices, process affecting it, or  
36 orders of the superintendent may be served;

38                   (4) A statement showing its technical qualifications  
for acting in the capacity for which it seeks a license;

40                   (5) A biography of the ownership and management of the  
42 organization; and

44                   (6) Any other relevant information and documents that  
the superintendent may require.

46           B. Every organization which has applied for a license must  
48 notify the superintendent of every material change in the  
facts or in the documents on which its application was  
50 based. Any amendment to a document filed under this section  
must be filed at least 30 days before it becomes effective.

2 C. If the superintendent finds that the applicant and the  
4 natural persons through whom it acts are competent,  
6 trustworthy and technically qualified to provide the  
8 services proposed, and that all requirements of the law are  
10 met, the superintendent shall issue a license specifying the  
12 authorized activity of the applicant. The superintendent  
14 may not issue a license if the proposed activity would tend  
16 to create a monopoly or to lessen substantially the  
18 competition in any market.

20 D. The superintendent may at any time, after hearing,  
22 revoke or suspend the license of an advisory organization  
24 that does not comply with the requirements and standards of  
26 this section.

28 **§2321-B. Insurers and advisory organizations; prohibited**  
30 **activity**

32 1. No insurer or advisory organization may:

34 A. Attempt to monopolize, or combine or conspire with any  
36 other person to monopolize an insurance market; or

38 B. Engage in a boycott, on a concerted basis, of an  
40 insurance market.

42 2. No insurer may agree with any other insurer or with an  
44 advisory organization to mandate adherence to or to mandate use  
46 of any rate, rating plan, rating schedule, rating rule, policy or  
48 bond form, rate classification, rate territory, underwriting  
50 rule, survey, inspection or similar material, except as needed to  
develop statistical plans permitted by section 2323.

A. The fact that 2 or more insurers, whether or not members  
or subscribers of an advisory organization, use consistently  
or intermittently the same rates, rating plans, rating  
schedules, rating rules, policy or bond forms, rate  
classifications, rate territories, underwriting rules,  
surveys or inspections or similar materials is not  
sufficient in itself to support a finding that an agreement  
exists.

B. Two or more insurers having a common ownership or  
operating in this State under common management or control  
may act in concert between or among themselves with respect  
to any matters pertaining to those activities authorized in  
this chapter as if they constituted a single insurer.

3. No insurer or advisory organization may make any  
arrangement with any other insurer, advisory organization, or  
other person that has the purpose or effect of restraining trade

2 unreasonably or of substantially lessening competition in the  
3 business of insurance.

4 **§2321-C. Advisory organizations; prohibited activity**

6 In addition to the other prohibitions described in section  
7 2321-B, except as specifically permitted under section 2321-D, no  
8 advisory organization may compile or distribute recommendations  
9 relating to rates that include profit or expenses other than loss  
10 adjustment expenses.

12 **§2321-D. Advisory organizations; permitted activity**

14 An advisory organization, in addition to other activities  
15 not prohibited, is authorized on behalf of its members and  
16 subscribers to:

18 1. Develop statistical plans including territorial and  
19 class definitions;

20 2. Collect statistical data from members, subscribers or  
22 any other source;

24 3. Prepare and distribute prospective loss costs;

26 4. Prepare and distribute factors, calculations or formulas  
27 pertaining to classification, territory, increased limits and  
28 other variables;

30 5. Prepare and distribute manuals of rating rules and  
31 rating schedules that do not include final rates, expense  
32 provisions, profit provisions or minimum premiums;

34 6. Distribute information that is required or directed to  
35 be filed with the superintendent;

36 7. Conduct research and on-site inspections in order to  
38 prepare classifications of public fire defenses;

40 8. Consult with public officials regarding public fire  
41 protection as it would affect members, subscribers and others;

42 9. Conduct research and collect statistics in order to  
44 discover, identify and classify information relating to causes or  
45 prevention of losses;

46 10. Prepare policy forms and endorsements and consult with  
48 members, subscribers and others relative to their use and  
49 application;

50



2       11. Conduct research and on-site inspections for the  
purpose of providing risk information relating to individual  
4       structures;

6       12. Collect, compile and distribute past and current prices  
of individual insurers, and publish such information;

8       13. File final rates, at the direction of the  
10       superintendent, for residual market mechanisms; and

12       14. Furnish any other services, as approved or directed by  
the superintendent, related to those enumerated in this section.

14       §2321-E. Filing of prospective loss costs and supplemental  
16       information

18       Advisory organizations may develop and file with the  
superintendent for approval prospective loss costs and  
20       supplementary rating information. Such filings shall contain the  
statistical data and supporting information for calculations or  
22       assumptions underlying the prospective loss costs. Advisory  
organization filings are subject to the provisions of sections  
24       2303, 2304-A and 2304-B.

26       Sec. 24. 24-A MRSA §2322, as amended by PL 1973, c. 585, §12,  
is repealed.

28       Sec. 25. 24-A MRSA §2322-A is enacted to read:

30       §2322-A. Joint underwriting, joint reinsurance pool and  
32       residual market activities

34       1. Notwithstanding section 2321-B, subsection 2 and  
consistent with sections 2325, 2325-A and 2366, insurers, rating  
36       organizations and advisory organizations participating in joint  
underwriting, joint reinsurance pools or residual market  
38       mechanisms may, in connection with such activity, act in  
cooperation with each other in the making of rates, rating  
40       systems, policy forms, underwriting rules, surveys, inspections  
and investigations, the furnishing of loss and expense statistics  
42       or other information, or conducting research. Joint  
underwriting, joint reinsurance pools and residual market  
44       mechanisms are not considered to be advisory organizations.

46       2. Insurers, joint underwriters, joint reinsurance pools  
and residual market activities are regulated as follows.

2           A. Except to the extent modified by this section, insurers,  
4           joint underwriting, joint insurance pool and residual market  
              mechanism activities are subject to the other provisions of  
              chapters 23 and 25.

6           B. If, after hearing, the superintendent finds that any  
8           activity or practice of an insurer participating in joint  
10           underwriting or a pool is unfair, is unreasonable, will tend  
12           to lessen competition in any market or is otherwise  
              inconsistent with the provisions or purposes of this  
              chapter, the superintendent may issue a written order and  
              require the discontinuance of such activity or practice.

14           **Sec. 26. 24-A MRSA §2323, sub-§1,** as amended by PL 1977, c.  
16           694, §418, is further amended to read:

18           1. The superintendent, acting pursuant to the Maine  
20           Administrative Procedure Act, Title 5, chapter 375, subchapter  
22           II, shall may promulgate reasonable rules and statistical plans,  
24           reasonably adopted to each of the rating systems on file with  
26           him, which may be modified from time to time and which shall be  
28           used thereafter by each insurer in the recording and reporting of  
30           its loss and countrywide expense experience, in order that the  
32           experience of all insurers be made available at least annually in  
34           such form and detail as may be necessary to aid him the  
              superintendent in determining whether rating systems comply with  
              the standards set forth in section 2303. Such rules and plans may  
              also provide for the recording and reporting of expense  
              experience items which are specially applicable to this State and  
              are not susceptible of determination by a prorating of  
              countrywide expense experience. The superintendent may also  
              adopt reasonable rules for companies to use in recording and  
              reporting to the superintendent their rates and other information  
              determined to be necessary or appropriate for the administration  
              of this chapter and the effectuation of its purposes.

36           **Sec. 27. 24-A MRSA §2323, sub-§§3 and 4,** as amended by PL 1973,  
38           c. 585, §12, are further amended to read:

40           3. The superintendent may designate one or more rating  
42           organizations, advisory organizations or other agencies to assist  
44           him in gathering such experience and making compilations thereof,  
              and such compilations shall be made--available,--subject--to  
              ~~reasonable rules promulgated by the superintendent, to insurers~~  
              and ~~rating organizations~~ a public document.

46           4. Each insurer shall report its loss or expense experience  
48           to the lawful rating organization, advisory organization or  
50           agency of which it is a member or subscriber, but shall not be  
52           required to report its loss or expense experience to any rating  
              organization, advisory organization or agency of which it is not  
              a member or subscriber. Any insurer not reporting such experience

2 to a rating organization, advisory organization or other agency  
3 may be required to report such experience to the superintendent.  
4 Any report of such experience of any insurer filed with the  
5 superintendent shall be deemed confidential and shall not be  
6 revealed by the superintendent to any other insurer or other  
7 person, but the superintendent may make compilations including  
8 such experience.

9  
10 **Sec. 28. 24-A MRS §2324, sub-§§2 and 3, as amended by PL 1973,  
11 c. 585, §12, are further amended to read:**

12 **2.** In order to further uniform administration of rate  
13 regulatory laws, the superintendent and every insurer, advisory  
14 organization and rating organization may to the extent consistent  
15 with this chapter exchange information and experience data with  
16 insurance supervisory officials, insurers and rating  
17 organizations in other states and may consult with them with  
18 respect to rate making and the application of rating systems.

19 **3.** Cooperation among rating organizations ~~or among rating~~,  
20 advisory organizations and insurers in activities related to rate  
21 making or in other matters within the scope of this chapter is  
22 authorized, but the filings resulting from such cooperation are  
23 subject to all provisions of this chapter which are applicable to  
24 filings generally. The superintendent may review such cooperative  
25 activities and practices and if, after a hearing, he the  
26 superintendent finds that any such activity or practice is unfair  
27 or unreasonable or otherwise inconsistent with this chapter, he  
28 the superintendent may issue a written order specifying in what  
29 respects such activity or practice is unfair or unreasonable or  
30 otherwise inconsistent with this chapter, and requiring the  
31 discontinuance of such activity or practice.

32  
33 **Sec. 29. 24-A MRS §2325, sub-§2, as amended by PL 1979, c.  
34 423, is further amended to read:**

35  
36 **2.** Every insurer undertaking to transact in this State the  
37 business of automobile and motor vehicle bodily injury, property  
38 damage liability, physical damage, and medical payments insurance  
39 and every ~~rating~~ advisory organization which files rates for such  
40 insurance shall cooperate in the preparation and submission of a  
41 plan for the equitable apportionment among insurers of applicants  
42 for insurance who are in good faith entitled to, but who are  
43 unable to procure through ordinary methods, such insurance. The  
44 plan shall provide:

45  
46 **A.** Reasonable rules governing the equitable distribution of  
47 risks by direct insurance, reinsurance or otherwise and  
48 their assignment to insurers;  
49  
50

2 B. Rates and rate modifications applicable to such risks  
which shall not be excessive, inadequate or unfairly  
4 discriminatory;

6 C. The limits of liability which the insurer shall be  
required to assume, except that the maximum amount of  
8 physical damage coverage for commercial type vehicles shall  
be determined by the superintendent based on the current  
10 cost of new vehicles but not to exceed a maximum amount of  
\$100,000; and

12 D. A method whereby applicants for insurance, insureds and  
14 insurers may have a hearing on grievances and the right of  
appeal to the superintendent.

16 **Sec. 30. 24-A MRSA §2325, sub-§§3 and 5**, as amended by PL 1973,  
c. 585, §12, are further amended to read:

18  
20 3. The plan referred to in subsection 2 shall be filed in  
writing with the superintendent. The superintendent shall review  
22 the plan as soon as reasonably possible after filing in order to  
determine whether it meets the requirements set forth in  
24 subsection 2, paragraphs A, B, C and D. The plan, unless sooner  
approved in writing, shall be on file for a waiting period of 30  
26 days before it becomes effective. The plan shall be deemed  
approved unless disapproved by the superintendent within the  
waiting period.

28  
30 Subsequent to the waiting period, the superintendent may  
disapprove the plan on the grounds that it does not meet the  
32 requirements set forth in subsection 2, paragraphs A, B, C and D,  
but only after a hearing held upon not less than 10 days' written  
34 notice to every insurer and ~~rating~~ advisory organization  
affected, specifying the matters to be considered at such  
36 hearing, and only by an order specifying in what respect he the  
superintendent finds that the plan fails to meet such  
38 requirements, and stating when within a reasonable period  
thereafter the plan shall be deemed no longer effective. Such  
40 order shall not affect any assignment made or policy issued or  
made prior to the expiration of the period set forth in the  
42 order. Amendments to the plan shall be prepared, filed and  
reviewed in the same manner as herein provided with respect to  
the original plan.

44  
46 5. If, after hearing, the superintendent finds that any  
activity or practice of any insurer or ~~rating~~ advisory  
48 organization in connection with the operation of the plan  
referred to in subsection 2 is unfair or unreasonable or  
50 otherwise inconsistent with this section, he the superintendent  
may issue a written order specifying in what respects such  
activity or practice is unfair or unreasonable or otherwise

inconsistent with this section and requiring the discontinuance  
of such activity or practice.

**Sec. 31. 24-A MRSA §2326, sub-§1, ¶C,** as enacted by PL 1969,  
c. 132, §1, is amended to read:

C. Any rating or advisory organization, or any insurer  
which will affect the rates or premiums chargeable under  
this chapter.

**Sec. 32. 24-A MRSA §2329, sub-§1,** as enacted by PL 1969, c.  
132, §1, is repealed.

**Sec. 33. 24-A MRSA §2329, sub-§2,** as repealed and replaced by  
PL 1977, c. 694, §420, is amended to read:

2. The superintendent may ~~file a complaint with the  
Administrative Court seeking to suspend the license, after notice  
and opportunity for hearing, deny, revoke, suspend or limit the  
permissible activities~~ of any rating or advisory organization or  
insurer which fails to comply with an order of the superintendent  
within the time period provided by the order. ~~No ruling of  
suspension shall become effective until the time prescribed for  
an appeal has expired, or if an appeal has been taken, until the  
order of suspension has been affirmed. The duration of the  
suspension shall be determined by the Administrative Court  
pursuant to the authority set forth in Title 4, chapter 25.~~

**Sec. 34. 24-A MRSA §2330,** as amended by PL 1973, c. 585, §12,  
is further amended to read:

**§2330. Appeals from superintendent**

Any insurer, advisory organization or rating organization  
aggrieved by any order or decision of the superintendent may  
appeal therefrom as provided in section 236 (~~appeal from the  
superintendent~~).

**Sec. 35. 24-A MRSA §2412, sub-§1,** as amended by PL 1987, c.  
476, §1, is further amended to read:

1. No basic insurance policy or annuity contract form, or  
application form when written application is required and is to  
be made a part of the policy or contract, or printed rider or  
endorsement form or form of renewal certificate, may be  
delivered, or issued for delivery in this State, unless the form  
has been filed with and approved by the superintendent. This  
provision shall not apply to surety bonds, or to specially rated  
inland marine risks, or to policies, riders, endorsements or  
forms of unique character designed for and used with relation to  
insurance upon a particular subject, or which relate to the

2 manner of distribution of benefits or to the reservation of  
rights and benefits under life or health insurance policies and  
4 are used at the request of the individual policyholder, contract  
holder, or certificate holder. This provision shall also apply to  
6 "other group" insurance policies, as defined in sections 2612-A  
and 2808, effectuated and delivered outside this State, but  
8 covering persons resident in this State. As to group insurance  
policies issued outside the State to trustee groups pursuant to  
sections 2606-A and 2806, and to association groups pursuant to  
10 sections 2607-A and 2805-A, the group certificate to be  
delivered or issued for delivery in this State shall be filed  
12 with the superintendent, at least 60 days prior to any  
solicitation in this State, along with sufficient information  
14 concerning the nature of the group, including any trust  
agreements or association bylaws. The foregoing certificate and  
16 information shall be filed for the limited purpose of permitting  
the superintendent to determine whether the group is a bona fide  
18 trustee group, as defined in sections 2606-A and 2806, or a bona  
fide association group, as defined in sections 2607-A and 2805-A.  
20 As to group insurance policies issued to groups, other than those  
described in this subsection, effectuated and delivered outside  
22 this State, but covering persons resident in this State, the  
group certificates to be delivered or issued for delivery in this  
24 State shall be filed, for the superintendent's information only,  
with the superintendent at his the superintendent's request. As  
26 to forms for use in property, marine other than wet marine and  
transportation insurance, casualty and surety insurance  
28 coverages, the filing required by this subsection may be made by  
rating or advisory organizations on behalf of its members and  
30 subscribers; but this provision shall not be deemed to prohibit  
any such member or subscriber from filing any such forms on its  
32 own behalf.

34 **Sec. 36. Effective date.** The effective date of this Act is  
January 1, 1991.

36 **Sec. 37. Application.** This Act does not apply to commercial  
38 lines until January 1, 1992.

#### 40 STATEMENT OF FACT

42 The purpose of this bill is to encourage rate competition  
44 and prohibit potentially anticompetitive practices of rating  
organizations by prohibiting rating organizations from developing  
46 or filing final premiums. Each insurer will be required to  
select its own expense and profit margin. Insurer advisory  
48 organizations will be permitted to prepare, file for approval and  
distribute prospective loss costs. This bill applies to all  
50 property and casualty lines of insurance except workers'  
compensation.