MAINE STATE LEGISLATURE

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114th MAINE LEGISLATURE

SECOND REGULAR SESSION - 1990

Legislative Document

No. 2389

H.P. 1730

House of Representatives, March 1, 1990

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27.

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

EDWIN H. PERT, Clerk

Presented by Representative RYDELL of Brunswick.

Cosponsored by Representative PARADIS of Augusta, Representative MARSANO of Belfast and Senator GAUVREAU of Androscoggin.

STATE OF MAINE

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IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND NINETY

An Act to Strengthen Oversight of Medical Malpractice Insurance and Stabilize Premiums.

(AFTER DEADLINE)



	Be it enacted by the People of the State of Maine as follows:
2	Sec. 1. 24-A MRSA §2302, sub-§3-A is enacted to read:
4	
	3-A. Medical malpractice insurance is first subject to
6	subchapter III, but any provisions of this subchapter not
	inconsistent with subchapter III also apply.
8	
	Sec. 2. 24-A MRSA §2303, sub-§1, ¶G is enacted to read:
10	5 5 6 7 7 7 7 7 7 7 7 7 7 7 7 7 7 7 7 7 7
	G. In the case of medical malpractice insurance rates,
12	rates must reflect investment income and potential income
16	from unearned premiums, loss reserves and all cash flows.
1.4	Troil unearned premiums, 1088 reserves and arr cash froms.
14	Sec. 3. 24-A MRSA c. 25, sub-c. III is enacted to read:
1.6	Sec. 3. 24-A MINSA C. 23, Sun-C. III is enacted to read:
16	CHANGES ATT
	SUBCHAPTER 111
18	
	MEDICAL MALPRACTICE LIABILITY INSURANCE
20	
	§2381. Medical malpractice liability insurance rates
22	
	Medical malpractice liability insurance rates and
24	classifications must be approved, modified or disapproved by the
	superintendent subject to this chapter. Rates determined by the
26	superintendent are maximum rates. Premium rates up to 5% higher
	or lower than those approved may be used if filed with the
28	superintendent within 5 days after commencing use. If the
	superintendent has reason to believe that the filing produces
30	rates that are excessive, inadequate or unfairly discriminatory,
	the superintendent may disapprove them under chapter 23 and
32	chapter 25, subchapter I.
	The second secon
34	§2382. Approval of rates
36	The following provisions apply to medical malpractice
	insurance rates.
38	
	1. Determination of rates. Every insurer that issues
40	medical malpractice liability insurance policies and that
	provides more than 10% of the medical malpractice coverage in
42	this State shall file with the superintendent its classification
	of risks and maximum premium rates, which may not take effect
44	until the superintendent has approved them. The superintendent
	shall apply the procedures and standards of this section in
46	investigating, reviewing and determining just and reasonable
- 0	rates.
48	
- 0	2. Contents of filing. The superintendent shall require
50	every insurance company subject to this subchapter to file with
50	the bureau the data statistics subchapter to fire with

	necessary to determine just and reasonable rates. In
2	superintendent may not approve a rate filing until the
	information has been submitted. The required information
4	includes, but is not limited to:
6	A. Financial records showing the amount of profit or loss made on every classification of medical malpractice
8	insurance during the previous year;
10	B. Records showing profits from investment income, including investment income on net realized capital gains
12	and loss reserves and unearned premiums;
14	C. Data reflecting conformity with the investment model
16	developed under section 2383 or an explanation of nonconformity with the model; and
18	D. Records showing the utilization of adequate programs to
20	control costs and expenses, in accordance with standards to be determined and approved by the superintendent. At a
22	minimum, the program must be designed to have a material impact on premium charges by reducing costs and expenses.
24	3. Additional information. The superintendent may require,
26	at any time, any additional information the superintendent determines necessary.
28	4. Standard for approval. This subsection applies to determination of just and reasonable rates for a filing.
30	
32	A. The superintendent shall establish rates, based on the filing and sworn testimony, which are, in addition to any
34	other requirements:
36	(1) Just and reasonable and not excessive, inadequate or unfairly discriminatory; and
38	(2) Based only on a just and reasonable profit.
40	B. In establishing just and reasonable rates, the
42	superintendent shall consider:
44	(1) The reasonableness of any return on capital and surplus allocated to the coverage of risks in this
	State;
46	(2) The reasonableness of the amounts of capital and
48	surplus allocable to the coverage of risks in this
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	(3) The reported investment income earned or realized
2	from funds generated from business in this State;
4	(4) The reported loss reserves, including the methods
	and the interest rates used in determining the present
6	value for reported reserves and the use of those
	reserves in the determination of the proposed rates;
8	1 Constitution of the proposition of the propositio
Ū	(5) The reported annual losses and loss adjustment
10	expenses; and
10	CAPCING OF CITY
12	(6) The measures taken to contain costs.
14	(0) The medaties caken to contain costs.
14	C. The justness and reasonableness of rates must be
- ·	determined for the period in which the rates are in effect.
16	decemined for the portion in mixed the factor are the original
10	D. The filer shall have the burden of proving that the
18	rates meet the requirements of this chapter and chapter 23.
	races meet the requirements of this enapter and enapter as
20	E. The superintendent may not approve an increase or
	decrease in rates unless the superintendent finds that the
22	information supplied in the filing and sworn testimony is
44	accurate and sufficient to meet the requirements of this
24	section.
44	Beccion.
26	5. Market disruption. In determining whether a rate is
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-	reasonable, the superintendent shall consider the market
26 28	reasonable, the superintendent shall consider the market disruption that may be caused by substantial increases or
28	reasonable, the superintendent shall consider the market disruption that may be caused by substantial increases or decreases in rates. If the superintendent determines that a
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28 30 32 34 36 38 40 42	reasonable, the superintendent shall consider the market disruption that may be caused by substantial increases or decreases in rates. If the superintendent determines that a requested rate is unreasonable because it would cause undue market disruption, the superintendent may take such reasonable steps as necessary to avoid or minimize disruption, including limiting the amount that class relativities may be changed at any one time, or spreading the requested adjustments over a period not to exceed 3 years, to the extent that such action does not threaten the financial security of the insurer. 6. Public record. A rate filing is a public record and must be available for public review and inspection. 7. Public Advocate participation. The Public Advocate shall participate as follows. A. The Public Advocate, as appointed under Title 35-A, section 1701, shall be a party to the hearing mandated in

the decision.

- B. A party filing for a rate increase under this section shall pay to the superintendent at the time of filing a filing fee of \$10,000 which the superintendent shall immediately credit to the Public Advocate. That fee must be segregated and expended for the purpose of employing outside consultants and of paying other expenses to fulfill the requirements of this subchapter. Any portion of the fee not so expended must be returned to the filer.
- 8. Public hearing. The superintendent shall hold a public hearing as provided in sections 229 to 235 on each filing. The public hearing must be conducted no sooner than 30 days and no later than 60 days after the date the rate filing is determined complete by the superintendent. The superintendent shall establish just and reasonable rates and state the findings in a written order issued within 90 days from the date the filing is completed. If the superintendent denies or dismisses a filing, any further filing is deemed to be a new filing, subject to this public hearing requirement.

9. Procedures; rules. Subject to the applicable
requirements of the Maine Administrative Procedure Act, Title 5,
chapter 375, the superintendent may adopt rules establishing
procedures for the administration of this section.

§2383. Investment income model

The superintendent shall develop and periodically update a model for estimating investment income earned in the business of medical malpractice. The model must take into account both risk and market rates of return.

§2384. Closed claims study

1. Model. The superintendent shall prepare and forward to the Legislature, by January 1, 1991, a model for collecting data in a closed claims study of medical malpractice claims. The model must be developed after a public hearing process, and must provide sufficient information to serve as a basis for comparison with rate filings. The superintendent shall also develop a model for collecting data on claims made in the State on an ongoing basis using the same public hearing process.

- 2. Study contents. The study must include information regarding:
 - A. The number of claims opened;
 - B. The history of each claim;

2	C. Demographic characteristics of the plaintiffs and defendants;
4	D. Types of injuries:
6	E. Policies in effect;
8	F. Loss reserves established and any changes in loss reserves;
10 12	G. Disposition of the claims;
14	H. Amounts and breakdown of any settlements or verdicts; and
16	I. A breakdown of allocated loss adjustment expenses.
18	3. Report to Legislature. The superintendent shall complete the first closed claims study and report to the
20	Legislature on the findings by January 1992. The study must then be conducted at 5-year intervals. The review of the investment
22	income model continues with annual reports that include data on the number of claims filed and settled and amounts paid must be
24	presented each January to the Legislature.
26	4. Confidentiality. The data must be collected and prepared in a manner that permits the public to examine the data
28	without breaching any applicable confidentiality requirements.
30	
32	STATEMENT OF FACT
32	STATEMENT OF FACT This bill implements some of the recommendations of the
32 34	This bill implements some of the recommendations of the Public Health Resource Group's study of medical malpractice
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insurance costs and investment and reserving practices.