

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.

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

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

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY

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

(AFTER DEADLINE)



2 necessary to determine just and reasonable rates. The
3 superintendent may not approve a rate filing until the
4 information has been submitted. The required information
5 includes, but is not limited to:

6 A. Financial records showing the amount of profit or loss
7 made on every classification of medical malpractice
8 insurance during the previous year;

10 B. Records showing profits from investment income,
11 including investment income on net realized capital gains
12 and loss reserves and unearned premiums;

14 C. Data reflecting conformity with the investment model
15 developed under section 2383 or an explanation of
16 nonconformity with the model; and

18 D. Records showing the utilization of adequate programs to
19 control costs and expenses, in accordance with standards to
20 be determined and approved by the superintendent. At a
21 minimum, the program must be designed to have a material
22 impact on premium charges by reducing costs and expenses.

24 3. Additional information. The superintendent may require,
25 at any time, any additional information the superintendent
26 determines necessary.

28 4. Standard for approval. This subsection applies to
29 determination of just and reasonable rates for a filing.

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

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

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

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

42 (1) The reasonableness of any return on capital and
43 surplus allocated to the coverage of risks in this
44 State;

46 (2) The reasonableness of the amounts of capital and
47 surplus allocable to the coverage of risks in this
48 State;

50

2 (3) The reported investment income earned or realized
3 from funds generated from business in this State;

4 (4) The reported loss reserves, including the methods
5 and the interest rates used in determining the present
6 value for reported reserves and the use of those
7 reserves in the determination of the proposed rates;

8 (5) The reported annual losses and loss adjustment
9 expenses; and

10 (6) The measures taken to contain costs.

11 C. The justness and reasonableness of rates must be
12 determined for the period in which the rates are in effect.

13 D. The filer shall have the burden of proving that the
14 rates meet the requirements of this chapter and chapter 23.

15 E. The superintendent may not approve an increase or
16 decrease in rates unless the superintendent finds that the
17 information supplied in the filing and sworn testimony is
18 accurate and sufficient to meet the requirements of this
19 section.

20 5. Market disruption. In determining whether a rate is
21 reasonable, the superintendent shall consider the market
22 disruption that may be caused by substantial increases or
23 decreases in rates. If the superintendent determines that a
24 requested rate is unreasonable because it would cause undue
25 market disruption, the superintendent may take such reasonable
26 steps as necessary to avoid or minimize disruption, including
27 limiting the amount that class relativities may be changed at any
28 one time, or spreading the requested adjustments over a period
29 not to exceed 3 years, to the extent that such action does not
30 threaten the financial security of the insurer.

31 6. Public record. A rate filing is a public record and
32 must be available for public review and inspection.

33 7. Public Advocate participation. The Public Advocate
34 shall participate as follows.

35 A. The Public Advocate, as appointed under Title 35-A,
36 section 1701, shall be a party to the hearing mandated in
37 this section. A copy of the filing must be served on the
38 Public Advocate at the same time as it is filed with the
39 superintendent. The Public Advocate may make timely and
40 appropriate requests for data necessary to participate in
41 the decision.

2 B. A party filing for a rate increase under this section
3 shall pay to the superintendent at the time of filing a
4 filing fee of \$10,000 which the superintendent shall
5 immediately credit to the Public Advocate. That fee must be
6 segregated and expended for the purpose of employing outside
7 consultants and of paying other expenses to fulfill the
8 requirements of this subchapter. Any portion of the fee not
9 so expended must be returned to the filer.

10 8. Public hearing. The superintendent shall hold a public
11 hearing as provided in sections 229 to 235 on each filing. The
12 public hearing must be conducted no sooner than 30 days and no
13 later than 60 days after the date the rate filing is determined
14 complete by the superintendent. The superintendent shall
15 establish just and reasonable rates and state the findings in a
16 written order issued within 90 days from the date the filing is
17 completed. If the superintendent denies or dismisses a filing,
18 any further filing is deemed to be a new filing, subject to this
19 public hearing requirement.

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

24 §2383. Investment income model

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

29 §2384. Closed claims study

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

38 2. Study contents. The study must include information
39 regarding:

40 A. The number of claims opened;

41 B. The history of each claim;

