

# MAINE STATE LEGISLATURE

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# 115th MAINE LEGISLATURE

## SECOND REGULAR SESSION-1992

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Legislative Document

No. 2442

S.P. 965

In Senate, March 24, 1992

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 "Joy J. O'Brien".

JOY J. O'BRIEN  
Secretary of the Senate

Presented by Senator KANY of Kennebec  
Cosponsored by Representative MITCHELL of Vassalboro.

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STATE OF MAINE

---

IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND NINETY-TWO

---

**An Act to Deregulate Workers' Compensation Insurance Voluntary  
Market Rates and to Establish the Workers' Compensation Employers'  
Mutual Fund.**

---

(AFTER DEADLINE)



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

2  
37 and 38, is repealed.

37 and 38, is repealed.

37 and 38, is repealed.

37 and 38, is repealed.

797, §§16, 37 and 38, are repealed.

A, §4, is amended to read:

**§2362. Workers' compensation rates**

Workers' compensation rates and classifications shall--be take effect and rates are approved, modified, or disapproved by the superintendent subject to this chapter. Rates that take effect without order of the superintendent and rates that are determined by the superintendent are maximum rates. Premium Lower premium rates less-than-these-approved may be used if filed with the superintendent within 5 days after commencing use. If the superintendent has reason to believe that the filing produces rates which that are inadequate or unfairly discriminatory, he the superintendent may disapprove them under subchapter I and chapter 23 and ~~chapter-25, subchapter-I.~~

A, §§5 to 9, is further amended to read:

**§2363. Workers' compensation insurance policies and rates**

The following provisions apply to workers' compensation insurance policies and rates.

1. **Policies.** Every insurance company or insurer issuing workers' compensation insurance policies covering the payment of compensation and benefits provided for in this subchapter must use only policy forms approved pursuant to section 2412.

2. **Determination of rates.** Every insurer issuing workers' compensation insurance policies shall file with the superintendent its classification of risks and maximum premium

2 rates, ~~which may not take effect until the superintendent has~~  
3 ~~approved them.~~ The superintendent shall apply the procedures and  
4 standards of this section in investigating, reviewing and  
determining just and reasonable rates. The superintendent may:

6 ~~A. Require the filing of specific rates for workers'~~  
7 ~~compensation insurance, including classification of risks,~~  
8 ~~experience or any other rating information from insurance~~  
9 ~~carriers authorized to transact insurance in this State;~~

10 B. Make or cause to be made investigations as the  
11 superintendent considers necessary to determine that the  
12 filed rates ~~to be promulgated~~ are just and reasonable; and

13 C. At any time, after public hearing, withdraw the  
14 superintendent's approval of a previously approved rate  
15 filing.

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

31  
32 **4. Contents of filing.** A rate filing shall must include:

33 A. Maine premium, loss and loss adjustment experience.  
34 Maine premium, loss and loss adjustment experience must show:

35  
36  
37 (1) Data from all ~~carriers writing~~ ~~workers'~~  
38 ~~compensation~~ the carrier on insurance in this State.  
39 ~~If a company is excluded from the rate level, trend,~~  
40 ~~loss development, expense determination, classification~~  
41 ~~differentials or investment income calculations, that~~  
42 ~~company and its market share must be identified and an~~  
43 ~~explanation provided for its exclusion;~~

44  
45 (2) Premiums calculated at current rate level.  
46 Whenever on-level factors are used, their derivation  
47 must be shown. The derivation of the percentages of  
48 total premium written and earned at various rate levels  
49 must also be shown;  
50

- 2 (3) The amount of premium collected from the expense  
4 constant. This premium must be provided in dollars and  
6 as a percentage of the standard earned premium and as a  
8 percentage of net earned premium. If the percentage of  
premium collected in this manner is expected to change,  
the extent of the change must be estimated and the  
details of this estimation provided;
- 10 (4) The amount of premium collected by the minimum  
12 premium. This premium must be provided in dollars and  
14 as a percentage of standard earned premium and as a  
16 percentage of earned premium. If the percentage of  
premium collected in this manner is expected to change,  
the extent of the change must be estimated and the  
details of this estimation provided;
- 18 (5) Earned premiums, which must include premium  
20 collected from the specific disease loading. If  
22 disease loadings have been excluded, a justification  
must be provided;
- 24 ~~(6) -- The latest earned premiums and market shares for  
the 10 largest workers' compensation insurers, by  
group, in this State;~~
- 26 ~~(7) -- The following information on carriers deviating  
from bureau workers' compensation rates for each of the  
last 3 years:~~
- 30 ~~(a) -- A list of all deviating carriers;~~
- 32 ~~(b) -- The total standard premium written at  
34 deviated rates;~~
- 36 ~~(c) -- The percentage of the entire statewide  
standard premium written at deviated rates;~~
- 38 ~~(d) -- The total amount of deviations in dollars;~~
- 40 ~~(e) -- The average percentage deviation for  
42 deviating companies; and~~
- 44 ~~(f) -- The average percentage deviation for all  
46 carriers;~~
- 48 ~~(8) -- The following information on carriers' workers'  
50 compensation dividend practices for each of the last 3  
years;~~

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~~(a) A list of all carriers issuing dividends;~~

~~(b) The total amount of dividends in dollars;~~

~~(c) The average percentage dividend issued by carriers issuing dividends; and~~

~~(d) The average percentage dividend issued by all carriers;~~

~~(9) (6)~~ All policy year and accident year incurred loss data used in the filing, provided in the aggregate and also separated into paid losses, case-incurred and incurred but not reported losses; and

~~(10) (7)~~ The related incurred losses for all incurred loss adjustment expense data contained in the filing;

B. Credibility factor development and application. All information relating related to the selection of the credibility factors contained in the filing shall must be provided, ~~which shall~~ and must include:

(1) A complete description of the methodology used to derive the factors;

(2) A description of the criteria used to select the methodology for inclusion in the filing;

(3) Details on the application of the methodology to this filing; and

(4) A listing of alternative methodologies used in other states in filings made during the last 2 years;

C. Loss development factor development and application.

(1) The following loss data at successive evaluation dates shall must be provided:

(a) At least the latest available 12 years of data ~~for matching companies~~ for all pairs of successive evaluation dates, except that for a rate filing made in 1989 and 1990 the data periods shall ~~be~~ are 10 and 11 years, respectively;

(b) Data on both a policy year and an accident year basis;

- 2 (c) Data separated into indemnity and medical  
losses as well as combined data;
- 4 (d) Data separated into paid, case-incurred,  
6 including incurred but not reported losses and  
case-incurred excluding incurred but not reported  
8 portions as well as total losses;
- 10 (e) Reported indemnity, medical, and total claims  
for all years and evaluation dates for which loss  
12 information is provided;
- 14 (f) The latest available 5-unit statistical  
policy years of loss data ~~for matching companies~~  
16 for all pairs of successive evaluation dates;
- 18 (g) Case-incurred losses, number of claims,  
standard earned premium and earned exposures;
- 20 (h) Losses separated into indemnity and medical  
22 losses;
- 24 (i) Compensable claim experience separated into  
deaths, permanent totals, major permanent  
26 partials, minor permanent partials and temporary  
totals;
- 28 (j) Current on-level benefit factors for each  
injury type split between indemnity and medical;  
30 and
- 32 (k) For each policy year, the actual average wage  
and the average wage after the application of any  
34 payroll limitation.
- 36 (2) All information ~~relating~~ related to the selection  
of the loss development factors contained in the filing  
38 shall must be provided. This information shall must  
consist of:
- 40 (a) A complete description of the methodology  
42 used to arrive at the selected factors;
- 44 (b) A description of alternative methodologies  
used or considered for use by the ~~rating-bureau~~  
46 carrier in other states during the last 2 years;  
and
- 48 (c) Specific details regarding the application of  
50 the criteria used in the selection of a  
methodology for this filing;

2 D. Trending factor development and application, which shall  
4 must include:

6 (1) The following trend information:

8 (a) Indemnity and medical trend factor  
10 calculations based upon both policy year data and  
12 accident year data from this State;

14 (b) Indemnity and medical trend factor  
16 calculations based upon countrywide policy year  
18 data;

20 (c) For the medical trend, separate compilations  
22 for fee schedule and nonfee schedule states on  
24 both a policy year and an accident year basis; and

26 (d) Any econometric projections done of claim  
28 severity, claim frequency and average weekly wages  
30 based on models used by or in the possession of  
32 the rating bureau; and

34 (2) All information ~~relating~~ related to the selection  
36 of the trend factors contained in the filings. This  
38 information shall must include:

40 (a) A complete description of the methodology  
42 used to derive the selected factors;

44 (b) A description of alternative methodologies  
46 used or considered for use by the ~~rating-bureau~~  
48 carrier in other states; and

50 (c) Specific details regarding the application of  
the criteria used in the selection of a  
methodology of this filing;

E. Changes in premium base and exposures. The following  
information shall must be provided with any filing proposing  
a change in premium discounts, expense constants or minimum  
premiums:

(1) Information on the distribution by size of policy  
shall must be provided so that the effects of premium  
discount, the expense constant and the minimum premium  
rule can be calculated. This information shall must  
include the number of policies and the dollar amount of  
premium in this State for the latest available 3 years  
separately for stock and nonstock companies, and



2 combined using the following premium size  
3 distribution: \$0-\$199; \$200-\$299; \$300-\$499;  
4 \$500-\$999; \$1,000-\$2,999; \$3,000-\$4,999; \$5,000-\$9,999;  
5 \$10,000-\$24,999; \$25,000-\$49,999; \$50,000-\$99,999;  
6 \$100,000-\$249,999; and over \$249,999. Information  
7 shall must be provided for the premium bands affected  
8 by the proposed changes; and

9  
10 (2) Any countrywide distributions of number of  
11 policies or premium by layer that is used in the filing  
12 shall must be described. Details shall must be  
13 provided concerning how these distributions have been  
14 used in the rate filing, the sources and dates of the  
15 information used to produce the distributions and a  
16 description of any adjustments that have been made to  
17 the distributions;

18 F. Limiting factor development and application, which shall  
19 must include the following information:

20 (1) Limitations on losses included in the statistical  
21 data used in the filing;

22 (2) Limitations on the extent of the rate level change;

23 (3) Limitations on the extent of classification rate  
24 changes; and

25 (4) Any other limitations applied;

26 G. Overhead expenses. The part of the filing pertaining to  
27 overhead expenses shall must include the following:

28 (1) The expense provisions used in the filing and an  
29 explanation of the derivation of the expense  
30 provisions, which shall must include the following  
31 information:

32 (a) A complete description of the methodology  
33 used to derive the selected provisions;

34 (b) A description of alternative methodologies  
35 used or considered for use by the ~~rating--bureau~~  
36 carrier in other states; and

37 (c) Specific details regarding the application of  
38 the criteria used in the selection of a  
39 methodology for this filing;

- 2 (2) Support for all the expense, tax and profit  
3 provisions for the proposed rates, under both the  
4 current and proposed expense provisions. ~~---An~~  
5 ~~explanation--shall--be--provided--concerning--why--these~~  
6 ~~provisions--are--appropriate--for--stock--and--nonstock~~  
7 ~~insurance-companies;~~
- 8 (3) Expense experience allocable to the coverage of  
9 risks in this State, including acquisition and field  
10 supervision expenses; taxes, licenses and fees; general  
11 expenses; and loss adjustment expenses. Safety  
12 engineering expense and loss control services expense  
13 shall must be stated separately under general expense;
- 14 (4) A description of any adjustments of countrywide  
15 data to reflect conditions within this State and the  
16 details of the underlying calculations. If the  
17 proposed expense provisions differ from those indicated  
18 by the data, an explanation shall must be provided;
- 19 (5) A description of how proposed allowances for  
20 expenses are reviewed each year by ~~committees-of~~ the  
21 ~~rating-bureau~~ carrier;
- 22 (6) The dollar amount, if any, of taxes and  
23 assessments included in the collected loss data;
- 24 (7) The details of the derivations of the tax  
25 multiplier;
- 26 (8) Expense data required by this subsection, ~~reported~~  
27 ~~in-the-aggregate-for-all-insurers.---The-expense-data~~  
28 ~~shall-be-reported-separately-for-each-of-the-10-largest~~  
29 ~~insurers,~~ based on written premium in the prior  
30 calendar year;
- 31 (9) ~~For-each-of-the-10-largest-writers-of-workers-~~  
32 ~~compensation-insurance-in-this-State,--a~~ A statement  
33 regarding any expense reduction activities undertaken  
34 in the last 3 years; and
- 35 (10) The changes and improvements instituted in loss  
36 control and employee safety engineering for the 10  
37 ~~largest-carriers,~~ carrier based on written premium in  
38 the prior calendar year.

39 If the superintendent finds that state expense data is not  
40 fully credible, the superintendent may consider expense data  
41 from outside this State;

2 H. Law amendment valuation. For any law changes becoming  
effective during that period in which rates will be in  
4 effect, or in effect but not evaluated in prior rate  
filings, the following information shall must be provided:

6 (1) A complete description of the methodology used to  
evaluate the law change;

8 (2) Identification of assumptions made and supporting  
10 information for those assumptions, both as to  
information before and after the law change; and

12 (3) Identification of the source and timeliness of  
14 data, including identification of data from experience  
within this State and data from countrywide or other  
16 states;

18 I. A showing of the overall statewide rate change as well  
as the amount of the change attributable to each of the  
20 following: Loss experience; a modification of the trend  
factor; a change in expense provisions; law amendments; a  
22 change in the tax provision; a change in the assessment  
provision; and any other factors. The rate changes for each  
24 industry group and each classification shall must also be  
shown;

26 J. The proposed rates for each classification;

28 K. Investment earnings. The following information related  
30 to anticipated investment income shall must be provided:

32 (1) Information on the amount of investment income  
earned on loss, loss expense and unearned premium  
34 reserves in relation to both net and standard earned  
premium for workers' compensation in this State  
36 calculated for the latest 5 years, and the total amount  
of investment income expected to be earned on loss,  
38 loss expense and unearned premium reserves in relation  
to both net and standard premium reserves for workers'  
40 compensation policies sold in this State during the  
years in which the proposed rates will be in effect.  
42 The derivation of these calculations shall must be  
provided in detail, including the amount of the  
44 composite reserves of each type at the beginning and  
end of the specified years.

46 (2) The estimated pay-out pattern of compensable  
48 injuries and illnesses in this State, adjusted to  
current law; and

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2 (3) ~~Composite information from the annual statement~~  
3 ~~for all workers' compensation insurers in this State.~~  
4 ~~The following information from the latest 2 annual~~  
5 ~~statements shall be provided in the same format and~~  
6 ~~detail as the exhibits in individual company statements;~~

7 (a) ~~Page 2, Assets, line one through the line~~  
8 ~~identified "Totals,";~~

9 (b) ~~Page 3, Liabilities, Surplus and Other Funds,~~  
10 ~~line one through the line identified "Totals,";~~

11 (c) ~~Page 4, Underwriting and Investment Exhibit,~~  
12 ~~line one through the line identified as "Surplus~~  
13 ~~as regards policyholders, December 31 current~~  
14 ~~year,";~~

15 (d) ~~Exhibit one, Analysis of Assets, line one~~  
16 ~~through the line identified "Totals,"; and~~

17 (e) ~~Schedule P sections dealing with workers'~~  
18 ~~compensation;~~

19 (3) Loss cost data may be filed by an advisory  
20 organization if the data presented pertains to workers'  
21 compensation insurance experience in this State and  
22 does not include the experience in other jurisdictions  
23 unless the superintendent finds that state loss cost  
24 data is not fully credible;

25 L. An identification of all statistical plans used or  
26 consulted in preparing this filing. A description of the  
27 data compiled by each plan shall must also be provided;

28 M. The resulting rates of return on equity capital  
29 resulting from the selected underwriting profit and  
30 contingency factor. The derivation of all factors used in  
31 producing the calculations and justification that the rate  
32 of return on equity is just and reasonable shall must be  
33 provided;

34 N. The level of capital and surplus needed. The following  
35 information relating to the level of capital and surplus  
36 must be provided:

37 (1) Aggregate premium to surplus ratios and reserve to  
38 surplus ratios for the latest 5 calendar years for all  
39 carriers writing workers' compensation insurance in  
40 this State the carrier; and

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(2) Estimates of comparable ratios for the years during which the rates will be in effect; and

O. The following miscellaneous information:

(1) For the following items, an explanation of the purpose for and a detailed description of the derivation shall must be included:

- (a) Expected loss rate;
- (b) D-ratio;
- (c) Excess loss factors;
- (d) Excess loss adjustment amounts; and
- (e) Table of weighting and ballast values;

(2) The following information ~~relating~~ related to the derivation of the profit and contingency loading contained in the filing shall must be provided:

- (a) A complete description of the methodology used to arrive at the selected loading;
- (b) A description of alternative methodologies used or considered for use by the ~~rating-bureau~~ carrier in other states; and
- (c) Specific details regarding the application of the criteria used in the selection of a methodology for this filing; and

(3) Information shall must also be provided on all filings by the ~~rating-bureau~~ carrier that have been submitted with an underwriting profit and contingency loading other than the provision used in this filing. The following information shall must be listed for all such filings in the last 3 years: The ~~State~~ state; the underwriting profit and contingency loading submitted; the loading approved; and the effective date of the ~~rate;~~ and

P. Rate filings may include retrospective rating plans.

Filing requirements under this subsection may be waived by the superintendent in writing if a carrier makes a good faith effort to produce the information and the information is found by the superintendent to be unavailable.

2 For a filing made on or after July 1st in any year, the data and  
4 information required in paragraphs A, C, D, G, K and N shall must  
6 be for the period ending with the immediately preceding calendar  
8 year. For a filing made prior to July 1st, the data and  
information required in paragraphs A, C, D, G, K and N shall must  
be for the period ending with the ~~second~~ 2nd preceding calendar  
year.

10 ~~5-A. Voluntary and residual market rates. If rates and~~  
12 ~~rating factors for the voluntary market and the residual market~~  
~~are submitted concurrently, the following information shall be~~  
14 ~~included in the filing:~~

16 ~~A. An explanation of the derivation of the rate~~  
18 ~~differential, or differentials, among the voluntary market~~  
~~rates, the safety pool rates and the accident prevention~~  
~~account rates; and~~

20 ~~B. For a filing made on or after July 1st in any year, for~~  
22 ~~the 3 calendar years immediately preceding the date of~~  
24 ~~filing, the actual written premium, earned premium, incurred~~  
26 ~~losses, incurred loss adjustment expenses, paid losses and~~  
~~paid loss adjustment expenses. For a filing made prior to~~  
28 ~~July 1st, the premium loss and expense information required~~  
~~by this paragraph shall be for the 2nd, 3rd and 4th~~  
~~preceeding calendar years.~~

30 5-B. Rates. All rates must be filed and any determination  
32 of whether the rate satisfies the requirements of this Title must  
be made by the superintendent on an individual basis.

34 **6. Additional information.** The superintendent may require,  
36 at any time, any additional information the superintendent deems  
necessary and may reasonably extend the time periods established  
in subsection 11 to allow time to provide that information.

38 A. Within 30 days of receipt of a filing, the  
40 superintendent shall determine if the filing is complete.

42 (1) If the filing is incomplete, the superintendent  
44 shall notify the applicant and all parties in writing  
of those deficiencies.

46 (2) An applicant shall complete or amend the filing  
48 within 30 days of that written notice. Upon motion by  
the applicant made within the 30-day period and upon a  
showing of good cause, the superintendent may extend  
50 the 30-day period as the superintendent deems  
appropriate.

2 (3) An action or inaction by the superintendent under  
4 this paragraph does not constitute a substantive  
6 finding that the information in the filing is  
8 sufficient to establish that any action or relief  
should be granted or that any facts have been proven or  
limit the superintendent's authority to request further  
information or data.

10 B. If the applicant fails to furnish the information within  
12 the time prescribed, the superintendent may issue an order  
dismissing the filing.

14 C. For all purposes, the date of completing the filing  
16 shall-be is deemed the date on which the last document that  
made the filing complete was received by the superintendent,  
18 except that the superintendent may treat the day that the  
incomplete filing was filed as the filing date if the  
20 incompleteness is found to be immaterial or not to have  
delayed, impeded or interfered with the ability of the  
22 superintendent, bureau or any party to respond to,  
investigate or process the filing.

24 6-A. Effective date. Every filing must state the effective  
26 date of the filing and must be made no less than 60 days prior to  
the stated effective date. A filing takes effect on the stated  
28 effective date unless an order to the contrary or an order  
requiring the filing of more information and extending the time  
30 period for consideration of the filing is entered by the  
superintendent.

32 6-B. Standard for review. A filing must provide for rates  
34 that are just and reasonable and not excessive, inadequate or  
unfairly discriminatory and that are based on a just and  
36 reasonable profit for the insurer. If the superintendent has  
reason to believe that a filing does not meet the standards of  
38 this chapter or violates the provisions of this Title, the  
superintendent shall issue, after a hearing, an order stating in  
40 what respects the filing does not meet the applicable  
requirements and stating that the filing is not effective.

42 7. Standard for approval. This subsection applies to  
determination of just and reasonable rates for a filing.

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

48 (1) Just and reasonable and not excessive, inadequate  
50 or unfairly discriminatory; and

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

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

(1) When applicable, the reasonableness of any return on capital and surplus allocable to the coverage of risks in this State;

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

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

(4) The reported loss reserves, including the methods 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;

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

(6) The measures taken to contain costs, including loss control, loss adjustment and employee safety engineering programs;

(7) The relationship of the aggregate amount of operating expenses reported by all carriers to the annual operating expenses reported in the filing and the annual insurance expense exhibits filed by each carrier with the superintendent;

(8) The impact of operating and management efficiency of the carriers on expense levels and the effect of variations in expense levels on rates; and

(9) Any premium surcharges or credits ordered by the superintendent pursuant to section 2367.

C. The justness and reasonableness of rates shall ~~shall~~ must be determined for the period in which the rates are in effect. Deficits in the residual market in any preceding year may not be included in the determination of rates.

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



2 E. The superintendent may not approve an increase or  
4 decrease in rates unless he the superintendent finds that  
6 the information supplied in the filing and sworn testimony  
8 is accurate and sufficient to meet the requirements of this  
10 section.

12 F. For the introduction of a new rate for a new  
14 classification or the adjustment of a single rate for an  
16 existing classification, the requirements of paragraph A,  
18 subparagraph (1); subsection 2; subsection 4, paragraphs B  
20 to E; and subsections 8, 10, 13 and 14 shall apply. The  
22 superintendent shall establish the new rate at a level which  
24 that is not unfairly discriminatory in relation to the  
26 currently approved rates for other classifications.

28 ~~7. A. Fee for servicing residual market. In every rate  
filing in which a rating bureau requests a rate adjustment, the  
superintendent shall take evidence on the issue of whether the  
fee for servicing the residual market is reasonable. Concurrent  
with the decision on the rate adjustment, the superintendent  
shall issue a decision on whether the fee is reasonable, taking  
into account the rate adjustment approved. If the superintendent  
determines that the fee is not reasonable, the superintendent  
shall order an adjustment to the fee, as necessary, to ensure  
that the fee is reasonable. The superintendent shall adopt rules  
establishing standards for the performance of adjustment services  
and requiring that servicing fees for individual insurance  
carriers be separately reviewed.~~

30 8. **Public record.** A rate filing shall ~~be~~ is a public  
32 record and shall ~~must~~ be available for public review and  
inspection.

34 9. **Public Advocate participation.** The Public Advocate  
36 shall participate as follows.

38 A. The Public Advocate, as appointed under Title 35-A,  
40 section 1701, shall ~~be~~ is a party to the proceeding  
42 resulting from each rate filing made under this section and  
44 may participate if the Public Advocate judges it necessary.  
A copy of the filing shall ~~must~~ be served on the Public  
Advocate at the same time as it is filed with the  
superintendent.

46 B. A party filing for a rate change under this section  
48 shall pay to the superintendent at the time of filing a  
50 filing fee of \$50,000 \$5,000, that which the superintendent  
shall immediately credit to the Public Advocate. The fee  
must be segregated and expended for the purpose of employing  
outside consultants and of paying other expenses to fulfill

2 the requirements of this subsection. Any portion of the fee  
not so expended must be returned to the filer. In addition,  
4 the party filing for a rate change shall pay the  
superintendent at the time of filing an additional fee of  
6 \$15,000 \$1,500 to cover the salaries of Public Advocate  
staff for the purpose and period of the staff involvement in  
8 the rate proceeding. The superintendent shall transfer this  
fee, and any other fees received for staff salaries, to the  
10 Public Advocate Regulatory Fund established pursuant to  
Title 35-A, section 116, subsection 8.

12 **10. Information for parties and intervenors.** A party or  
intervenor may make written application to the superintendent for  
14 an order that a filer produce information relevant to whether the  
filing meets the requirements of this Title, except for  
16 information ~~relating~~ related to a particular claim or information  
which that is unduly burdensome or repetitious. If the party  
18 filing fails to furnish the information within the time  
prescribed by the superintendent, the party or intervenor making  
20 the request may make written application to the superintendent  
for an order dismissing the filing. If, after a hearing, the  
22 superintendent determines that the failure to furnish the  
information was without good cause, he the superintendent shall  
24 issue an order for dismissal of the filing.

26 **11. Public hearing.** The superintendent shall may hold a  
public hearing as provided in sections 229 to 235 on each  
28 filing. The public hearing shall must be conducted no sooner  
than 30 days and no later than 60 days of from the date the rate  
30 filing is deemed complete by the superintendent, unless the  
superintendent extends these limits under subsection 6. The If  
32 the superintendent establishes the rates pursuant to section  
2362, the superintendent shall establish--just--and--reasonable  
34 issue the rates and state-his the findings in a written order  
issued within 90 days from the date the filing is completed,  
36 unless he the superintendent extends this limit under subsection  
6. If the superintendent denies or dismisses a filing, any  
38 further filing shall be is deemed to be a new filing, subject to  
this public hearing requirement.

40 **12. Subsequent filing.** A person may not file a rate filing  
within 180 days of receiving a rate increase or decrease. If a  
42 filing has been disapproved by the superintendent, the  
requirements of this subsection shall may not operate to delay a  
44 new filing and the data required by subsection 4, paragraph A,  
shall is only be required for each of the 3 most recent calendar  
46 years for which data are available.

48 **13. Procedure; rules.** Subject to the applicable  
50 requirements of the Maine Administrative Procedure Act, Title-5,

chapter--375, the superintendent may adopt rules establishing procedures for the administration of this section, including, procedures governing submission of petitions for intervenor status, prefiling of testimony and exhibits, information requests, subpoenas, prehearing conferences and conduct of hearings.

14. **Costs.** For the purpose of determining whether a filing meets the requirements of this section, the superintendent may employ outside consultants. The organization or insurer making the filing shall--be is responsible for the reasonable costs related to the review of workers' compensation rate filings, including conduct of the hearing.

Sec. 8. 24-A MRSA §2366, sub-§12 is enacted to read:

12. Transition period. Workers' compensation and employers' liability insurance may not be issued through the workers' compensation insurance residual market on or after October 1, 1992.

Sec. 9. 24-A MRSA c. 77 is enacted to read:

#### CHAPTER 77

#### WORKERS' COMPENSATION EMPLOYERS' MUTUAL FUND

#### §7101. Definitions

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

1. Assets. "Assets" means all net premium and investment income and obligations owed to the workers' compensation insurance residual market mechanism for policies written between January 1, 1988 and October 1, 1993, including amounts owed from carriers for poor servicing performance.

2. Board. "Board" means the Board of Directors of the Workers' Compensation Employers' Mutual Fund.

3. Certificate holder. "Certificate holder" means an employer that has purchased workers' compensation coverage through the fund.

4. Fund. "Fund" means the Workers' Compensation Employers' Mutual Fund created in section 7102.

5. Liabilities. "Liabilities" means all losses, expenses and obligations of the workers' compensation insurance residual

2 market mechanism for policies written between January 1, 1988 and  
3 October 1, 1993 and all expenses for administering the workers'  
4 compensation insurance residual market mechanism, excluding  
5 expenses that are the responsibility of servicing carriers paid  
6 for through the servicing allowance.

7 6. **Manager.** "Manager" means the Manager of the Workers'  
8 Compensation Employers' Mutual Fund.

9 7. **Superintendent.** "Superintendent" means the  
10 Superintendent of Insurance.

11 8. **Workers' compensation insurance residual market**  
12 **mechanism.** "Workers' compensation insurance residual market  
13 mechanism" means the mechanism pursuant to section 2366.

14 **§7102. Creation; purpose; organization of fund**

15 1. **Fund created.** The Workers' Compensation Employers'  
16 Mutual Fund is created as a nonprofit independent mutual fund.  
17 The fund is not a state agency and may not receive funding from  
18 the State.

19 2. **Purpose.** The fund is established for the purpose of  
20 providing workers' compensation coverage to employers of this  
21 State at the lowest possible cost and with the highest level of  
22 service consistent with reasonable actuarial principles and the  
23 financial integrity of the fund.

24 3. **Board.** The board consists of 7 members, 6 of whom are  
25 appointed, and the manager who shall serve as chair. Four  
26 members must be employers and 2 members must be employees.

27 A. The initial board must be appointed by the Governor.  
28 The Governor shall initially appoint 2 members for a  
29 one-year term, 2 members for a 2-year term and 2 members for  
30 a 3-year term.

31 B. As the terms of the initial board members expire,  
32 members must be elected by the certificate holders each year.

33 C. Except as provided for initial appointments, each board  
34 member holds office for a 4-year term or until a successor  
35 is elected and qualified. A vacancy is filled for the  
36 remainder of the unexpired term by election.

37 D. The board shall elect annually any officers it considers  
38 necessary for the performance of its duties.

2 E. Four members constitute a quorum of the board. Business  
4 may not be acted on without a quorum being present. All  
6 board decisions must be made by majority vote of the board.  
8 The board shall set its own compensation and expenses. The  
10 board shall adopt bylaws and determine the time and place of  
12 regular meetings and the method for calling special meetings.

14 4. Fund management. The board has exclusive management and  
16 control of the fund.

18 5. Powers and duties of board. The board has full power,  
20 authority and jurisdiction over the fund.

22 A. The board may perform all acts necessary or convenient  
24 in the exercise of any power, authority or jurisdiction over  
26 the fund, either in the administration of the fund or in  
28 connection with the business of the fund to be carried on by  
30 the fund under this chapter in order to fulfill the purposes  
32 of this chapter.

34 B. The board shall discharge its duties with the care,  
36 skill, prudence and diligence that a prudent director,  
38 acting in a similar capacity, would use in conducting a  
40 similar enterprise and purpose.

42 C. The board may appoint investment managers to oversee and  
44 manage the transfer of assets into the fund in a manner that  
46 will protect the value of those assets and maximize  
48 investment income, and to manage, acquire or dispose of any  
50 of the assets of the fund. An investment manager may be  
designated as an investment agent.

(1) An investment manager is any fiduciary designated  
by the board to manage, acquire or dispose of the  
assets of the fund. The investment manager shall  
acknowledge in writing that it is a fiduciary under the  
fund.

(2) The board may delegate its investment powers to  
investment managers of the fund. The purchase or sale  
of any securities by an investment manager must be in  
the name selected by the board. The authority of an  
investment manager to purchase or sell any securities  
for the fund must be evidenced by written authority  
executed by the manager.

(3) The board may enter into agreements with an  
investment manager setting forth the investment powers  
and limitations of the investment manager. The  
investment manager shall keep the board currently

2 informed of the nature and amount of the investments  
3 made for the fund by the investment manager. An  
4 investment manager is subject to the instructions of  
5 the board.

6 (4) A rating organization or advisory organization is  
7 not eligible to serve as investment manager of the fund.

8  
9 6. Manager. The fund is under the administrative control  
10 of the manager appointed by the board under section 7105.

11 7. Personal liability excluded. The members of the board  
12 and officers or employees of the fund are not liable personally,  
13 either jointly or severally, for any debt or obligation created  
14 or incurred by the fund.

15 **§7103. Power to provide coverage**

16  
17 1. Coverage for workers' compensation liability. The fund  
18 may provide coverage for an employer only against liability for  
19 compensation and benefits under this Title or under the federal  
20 Longshore and Harbor Workers' Compensation Act, 33 United States  
21 Code, Section 901 (1927), as amended, and any other coverages  
22 authorized by the board.

23 **§7104. General powers**

24  
25 1. Powers. For the purpose of exercising the specific  
26 powers granted in this chapter and effectuating the other  
27 purposes of this chapter, the fund may:

28 A. Sue and be sued;

29 B. Have a seal and alter it at will;

30 C. Make, amend and repeal rules related to the conduct of  
31 the business of the fund;

32 D. Enter into contracts relating to the administration of  
33 the fund or claims against employers who have secured  
34 coverage from the fund and for any other purpose consistent  
35 with this chapter;

36 E. Rent, lease, buy, pledge, mortgage or sell property in  
37 its own name and construct or repair buildings necessary to  
38 provide space for its operations;

39 F. Declare a dividend when there is an excess of assets  
40 over liabilities and minimum surplus requirements consistent  
41 with this Title;

2           G. Pay medical expenses, rehabilitation expenses,  
3           compensation due claimants of certificate holders, salaries  
4           and administrative and other expenses;

6           H. Hire personnel and set salaries and compensation. The  
7           Civil Service Law does not apply to any of the employees of  
8           the fund or to the hiring of those employees. The State  
9           Employees Labor Relations Act, Title 26, chapter 9-B, does  
10           not apply to the fund and its employees;

12           I. Issue guaranty fund certificates, surplus notes or  
13           debentures payable out of surplus, borrow money and agree to  
14           pay any rate of return with respect to any guaranty fund  
15           certificate, surplus note, debenture or other instrument,  
16           calculated in any manner and on such other terms as the  
17           board approves; and

18           J. Perform all other functions and exercise all other  
19           powers of a nonprofit independent mutual fund.

22           **§7105. Manager**

24           1. Appointment; qualifications. The board shall appoint  
25           the manager to be in charge of the day-to-day operations of the  
26           fund. The manager must have proven successful experience as an  
27           executive at the general management level. The manager is  
28           entitled to compensation as set by the board and serves at the  
29           will of the board.

30           2. Bond. Before assuming the duties of the office, the  
31           manager must qualify by giving an official bond in an amount and  
32           with sureties approved by the board. The manager shall file the  
33           bond with the Secretary of State. The premium for the bond must  
34           be paid from the revolving account established in section 7107.

35           3. Discharge. The manager may be discharged only for  
36           cause, after notice and investigation and by a majority vote of  
37           the full membership of the board.

40           **§7106. Manager's power**

42           Subject to the authority of the board and this chapter, the  
43           manager has the powers and duties prescribed in this section.

44           1. Chair. The manager serves as chair of the board and has  
45           the right to vote.

48           2. Safety inspections; loss control services. The manager  
49           shall have safety inspections of risks made and advisory services  
50

2 on safety and health measures furnished to certificate holders to  
3 the maximum extent possible, consistent with the financial  
4 integrity of the fund. A certificate holder taking action as a  
5 result of a safety inspection or advisory services does so at the  
6 certificate holder's own risk. The fund, the manager and any  
7 employees of the fund have no liability in connection with action  
8 taken as a result of a safety inspection or advisory services.

9  
10 3. Disbursement of funds. The manager may act for the fund  
11 in collecting and disbursing money necessary to administer the  
12 fund and conduct the business of the fund.

13  
14 4. Abstract summary. The manager shall have an abstract  
15 summary of any audit or survey conducted.

16 5. Reinsurance. The manager may reinsure all or part of  
17 any risk and may enter into agreements of reinsurance in the same  
18 way and to the same extent as an insurance carrier.

19  
20 6. General authority. The manager may perform all acts  
21 necessary in the exercise of any power, authority or jurisdiction  
22 over the fund, either in the administration of the fund or in  
23 connection with the business to be carried on by the fund under  
24 this chapter, including the establishment of rates for coverage.

25 **§7107. Funds**

26  
27  
28 1. Revolving account. The manager shall deliver all money  
29 collected or received under this chapter to a revolving account.  
30 The money in the account may be used by the fund in carrying out  
31 its purposes under this chapter.

32  
33  
34 2. Property; fund. All payments for coverage and other  
35 money paid to the fund, all property and securities acquired  
36 through the use of money belonging to the fund and all interest  
37 and dividends earned on money belonging to the fund and deposited  
38 or invested by the fund are the sole property of the fund and the  
39 certificate holders who pay into the fund and are used  
40 exclusively for the operation and obligations of the fund. The  
41 money of the fund is not state money. The property of the fund  
42 is not state property.

43  
44 3. Funding. The fund may not receive any state  
45 appropriation at any time.

46  
47  
48 4. Investment of fund money. The board may invest the  
49 money in the fund in investments permitted by law. When  
50 selecting investments, the primary goal of the board is the  
financial integrity of the fund. When investments of otherwise  
equal quality exist, the board shall give preference to any



2 investment that provides a direct benefit to the people of this  
3 State.

4 **§7108. Application of state laws**

6 The fund is not considered a state agency or other  
7 instrumentality of the State for any purpose. The fund is  
8 subject to all state laws governing or applying to a nonprofit  
9 independent mutual fund. The operations of the fund, to the  
10 extent that they constitute self-insurance, are subject to all  
11 those provisions of this Title and of Title 39 applicable to a  
12 self-insurer of workers' compensation liability, including, but  
13 not limited to, Title 24-A, chapter 25, subchapter II-A. The  
14 superintendent has the same powers with respect to the board as  
15 the superintendent has with respect to a self-insurer under this  
16 Title and Title 39. The fund is subject to the same income tax  
17 liability as a domestic mutual insurance company in this State  
18 under Title 36, Part 8. The fund is not considered a member  
19 insurer and is not eligible for participation in the Maine  
20 Insurance Guaranty Association pursuant to Title 24-A, chapter  
21 57, subchapter III.

22 **§7109. Reports and information**

24  
25 1. Annual report. The manager shall submit an annual  
26 report to the Governor and to the joint standing committee of the  
27 Legislature having jurisdiction over insurance matters indicating  
28 the business done by the fund during the previous year and  
29 containing a statement of the resources and liabilities of the  
30 fund and any other information considered appropriate by the  
31 manager.

32  
33 2. Statistical and actuarial data. The manager shall  
34 compile and maintain statistical and actuarial data related to  
35 the determination of proper rate levels for coverage, the  
36 incidence of work-related injuries, costs related to those  
37 injuries and any other data that the manager considers  
38 desirable. The manager shall, upon request, provide this data to  
39 the superintendent, the chair of the Workers' Compensation  
40 Commission, the Department of Labor, the joint standing committee  
41 of the Legislature having jurisdiction over insurance matters and  
42 the joint standing committee of the Legislature having  
43 jurisdiction over labor matters.

44  
45 3. Review and report by superintendent. The  
46 superintendent shall review the statistical and actuarial data  
47 and annual report of the fund each year and shall report to the  
48 joint standing committee of the Legislature having jurisdiction  
over insurance matters and the joint standing committee of the

2 Legislature having jurisdiction over labor matters on the  
3 financial stability of the fund.

4 **§7110. Funding**

6 **1. Fund becomes operational upon transfer of funds.** The  
7 fund becomes operational upon the receipt of funds provided by  
8 the transfer of assets from the workers' compensation insurance  
9 residual market mechanism under subsection 2 or funds from the  
10 Employment Rehabilitation Fund under subsection 3.

12 **2. Funding.** Transfer of funds from the workers'  
13 compensation insurance residual market mechanism to the fund must  
14 take place on October 1, 1992 under the following provisions.

16 **A.** Effective October 1, 1992, all assets and liabilities of  
17 the workers' compensation insurance residual market  
18 mechanism attributable to policies issued on or after  
19 January 1, 1988 become the property of the fund.

20 **B.** The workers' compensation insurance residual market  
21 mechanism may not incur expenses for administering the  
22 mechanism after October 1, 1992.

24 **C.** All records and reports of the workers' compensation  
25 insurance residual market mechanism losses, expenses,  
26 premiums, investment income, assessments, performance  
27 audits, servicing contracts and policies issued, terminated  
28 and renewed must be turned over to the fund on October 1,  
29 1992.

30 **3. Additional funding.** No later than September 1, 1992,  
31 the Treasurer of the State shall transfer to the fund \$300,000  
32 from the account of the Employment Rehabilitation Fund  
33 established pursuant to Title 39, section 57-D.

34 **4. Transitional administrative funding.** If the board  
35 determines that transitional administrative funding is required  
36 for administrative expenses necessary to begin operation of the  
37 fund prior to October 1, 1992, the board may direct the  
38 prepayment of up to \$1,000,000 from the workers' compensation  
39 insurance residual market mechanism. The workers' compensation  
40 insurance residual market mechanism must make the prepayment as  
41 directed by the board. Repayment to the workers' compensation  
42 insurance residual market mechanism of principle or interest may  
43 not be required.

44 **5. Servicing carrier responsibility.** The workers'  
45 compensation insurance residual market mechanism shall assign to  
46 the fund all servicing contracts and obligations in effect for  
47 the fund.

1 policies written between January 1, 1988 and October 1, 1992 and  
2 has full responsibility for servicing all policies written during  
that time period.

4  
6 **§7111. Servicing of fund**

8 The servicing of all coverage within the fund is governed by  
the following provisions.

10 1. Coverage written after October 1, 1992. The fund has  
the responsibility for managing servicing of fund coverage  
12 purchased by employers after October 1, 1992 and may do so  
through its own staff or by contracting with servicing agents.

14  
16 2. Standards for award. If an outside servicing contract  
is utilized, it must be awarded on the basis of acceptable price  
and performance, giving special consideration to loss control,  
18 safety engineering and other factors affecting safety. An  
outside servicing contract must be awarded on the basis of a  
20 competitive bidding process and permit access by the fund to  
expense, profit and claims-handling information.

22  
24 3. Servicing fees. Servicing fees paid to outside  
servicing contractors must be determined on a competitive,  
individual basis and contingent upon acceptable servicing  
26 performance, including performance of adjustment services and  
accident loss ratios.

28  
30 4. Policies written before October 1, 1992. Servicing  
carriers for residual market policies written before  
October 1, 1992 have full responsibility to the fund for  
32 providing high-quality service on those policies. The fund may  
monitor servicing carrier performance and may have access to  
34 information on servicing carrier expenses and claims adjustment  
performance. The fund may audit servicing performance.

36  
38 **§7112. Operation of fund**

40 1. Participation. Beginning October 1, 1992, the fund has  
the responsibility for managing the workers' compensation  
insurance residual market mechanism assets and liabilities  
42 attributable to policies issued by that mechanism between October  
1, 1992 and for issuing coverage to certificate holders who  
44 purchase coverage through the fund. The fund consists of the  
Accident Prevention Account and the Safety Pool.

46  
48 2. Accident Prevention Account; eligibility. Eligibility  
for coverage from the Accident Prevention Account is as follows.

2           A. The Accident Prevention Account is a plan that provides  
4           for the equitable apportionment among employers who are  
6           entitled to, but are unable to, procure insurance through  
8           ordinary methods because of a demonstrated accident  
          frequency problem, measurably adverse loss ratio over a  
          period of years or a demonstrated attitude of noncompliance  
          with safety requirements.

10           B. An employer is eligible for coverage from the Accident  
          Prevention Account if that employer:

12                   (1) Has at least 2 lost-time claims over \$10,000 and a  
14                   loss ratio greater than 1.00 over the last 3 years for  
                  which data is available; and

16                   (2) Has attempted to obtain insurance in the voluntary  
18                   market and has been refused by at least 2 insurers that  
                  write that insurance in this State.

20           3. Safety Pool; eligibility. Eligibility under the Safety  
22           Pool is as follows.

24           A. The Safety Pool is a plan that provides for an  
          alternative source of coverage for employers with good  
26           safety records.

28           B. An employer is eligible for the Safety Pool if that  
          employer:

30                   (1) Has had no more than one lost-time claim in the  
32                   last 3 years for which data is available, regardless of  
                  the resulting loss ratio;

34                   (2) Has a loss ratio that does not exceed 1.00 or has  
36                   had no more than one lost-time claim over \$10,000 over  
                  the last 3 years for which data is available; or

38                   (3) Has been in business for less than 3 years,  
40                   provided that the eligibility terminates if the  
42                   employer's loss ratio exceeds 1.00 at the end of any  
                  year.

44           C. A member of the Safety Pool who fails to meet  
46           eligibility requirements under paragraph B must be ordered  
          to leave the Safety Pool after one month's prior notice  
          given in writing to the employer.

48           4. Plan of operation. The board shall adopt rules  
          establishing a plan of operation for the fund. The plan of

2 operation must contain performance standards and those additional  
3 terms the board determines necessary.

4 A. The plan must include an experience rating system and  
5 merit rating plan providing that the payment for coverage of  
6 each certificate holder in the account is modified either  
7 prospectively or retrospectively. An experience rating  
8 system may be applied only to the manual rate of the plan.  
9 The sensitivity of a rating system may vary by size of the  
10 risk involved.

11 B. The plan must provide for payment for coverage  
12 surcharges for certificate holders in the Accident  
13 Prevention Account based on their specific loss experience  
14 within a specified period or other factors reasonably  
15 related to their risk of loss.

16  
17 (1) A payment for coverage surcharge may not be  
18 applied to a risk with a threshold loss ratio is less  
19 than 1.00. The threshold loss ratio is based on the  
20 ratio of "L" to "P" when:

21  
22 (a) "L" is the actual incurred losses of a risk  
23 during the previous 3-year experience period as  
24 reported, except that the largest single loss  
25 during the 3-year period is limited to the amount  
26 of premium charged for the year in which the loss  
27 occurred; and

28  
29 (b) "P" is the premium charged to a risk during  
30 that 3-year period.

31  
32 (2) Premium surcharges apply to a premium that is  
33 experience rating or merit rating modified.

34  
35 (3) Premium surcharges are based on a policyholder's  
36 adverse deviation from expected incurred losses in this  
37 State. The surcharge is based on the ratio of "A" to  
38 "B" when:

39  
40 (a) "A" is the actual incurred losses of a risk  
41 during the previous 3-year experience period as  
42 reported; and

43  
44 (b) "B" is the expected incurred losses of a risk  
45 during that period as calculated under the uniform  
46 experience rating or merit rating plan multiplied  
47 by the risk's current experience rating or merit  
48 rating modification factor.

50

(4) The premium surcharge is as follows:

<u>Ratio of "A" to "B"</u>	<u>Surcharge</u>
<u>Less than 1.20</u>	<u>None</u>
<u>1.20 or greater but less than 1.30</u>	<u>5%</u>
<u>1.30 or greater but less than 1.40</u>	<u>10%</u>
<u>1.40 or greater but less than 1.50</u>	<u>15%</u>
<u>1.50 or greater</u>	<u>20%</u>

5. Rates. Rates in the Accident Prevention Account and the Safety Pool must be determined together by the board.

A. Rates must include experience rating and merit rating plans. The experience rating plan must be the uniform experience rating plan. The merit rating plan must provide the maximum credits possible to Safety Pool certificate holders on the basis of individual loss experience, including frequency and severity, consistent with this chapter and sound actuarial principles.

B. The board shall review the rates, rating plans and rules, including rates for individual classifications and subclassifications, in the Accident Prevention Account and the Safety Pool at least once every 2 years and may review rates more frequently if necessary.

6. Mandatory deductible. A deductible applies to all coverage for certificate holders in the Accident Prevention Account that meet the following qualifications:

A. A net annual premium of \$20,000 or more subject to adjustment, pursuant to this section, in this State;

B. A premium not subject to retrospective rating; and

C. The policyholder's threshold loss ratio, as determined under subsection 4, paragraph B, subparagraph (1), is 1.00 or greater.

The deductible is \$1,000 a claim but applies only to wage loss benefits paid on injuries occurring during the year of coverage. The sum of all deductibles in one year of coverage may not exceed

2 the lesser of 15% of net annual payment for coverage or \$25,000.  
3 Each loss to which a deductible applies must be paid in full by  
4 the fund. After the year of coverage has expired, the  
5 certificate holder shall reimburse the fund the amount of the  
6 deductibles. This reimbursement is considered as payment for  
7 coverage for purposes of cancellation or nonrenewal.

8 For purposes of calculations required under this section, losses  
9 are evaluated 60 days from the close of the year of coverage.

10 Beginning October 1, 1996, the board shall adjust annually the  
11 \$20,000 payment of coverage level established in this subsection  
12 to reflect any change in rates for the Accident Prevention  
13 Account and any change in wage levels in the preceding calendar  
14 year. Changes in wage levels are determined by reference to  
15 changes in the state average weekly wage, as computed by the  
16 Department of Labor, Bureau of Employment Security. Any  
17 adjustment is rounded off to the nearest \$1,000 increment.

18 **7. Retrospective rating.** Retrospective rating plans must  
19 be available in accordance with this subsection. The board shall  
20 establish standards governing the application of retrospective  
21 rating plans.

22 **A.** The board shall impose retrospective rating plans under  
23 the following circumstances.

24 (1) Within the Accident Prevention Account under the  
25 standards the board may order, after hearing, a  
26 retrospective rating plan for a certificate holder that  
27 has sufficient size in terms of payment for coverage  
28 and number of employees to warrant such a rating and:

29 (a) For the 3 most recent years for which data is  
30 available, an experience modification factor and a  
31 loss ratio that indicate a serious problem of  
32 workplace safety; or

33 (b) A demonstrated record of repeated serious  
34 violations of workplace health and safety rules  
35 and regulations adopted under Title 26, chapter 6  
36 or 29 United States Code, Chapter 15, whichever is  
37 applicable.

38 (2) The maximum payment for coverage, including any  
39 applicable surcharge under this section, may not exceed  
40 150% of the standard payment for coverage.

41 **B.** Voluntary retrospective rating plans must be available  
42 to certificate holders as part of the coverage offered by  
43 the fund.

2           8. Fund excess and deficit. On October 1st of each year  
4           the board shall determine whether the money in the fund is  
6           sufficient to meet anticipated expenses, losses and reserves for  
            each policy year. All deficits and excess money must be  
            apportioned as follows.

8           A. All deficits must be shared through an assessment on all  
10          certificate holders in existence at the time of the  
12          assessment that purchased coverage through the fund in the  
            year of the deficit.

14                   (1) Certificate holders that in the year for which the  
16                   assessment is levied experienced actual and anticipated  
                    losses greater than the premiums paid to the fund are  
                    liable for 50% of the deficit.

18                   (2) All certificate holders are liable for 50% of the  
20                   deficit.

22          B. All excess money must be shared through a refund to all  
24          certificate holders in existence at the time of the refund  
26          that purchased coverage through the fund in the year of the  
            excess and that in the year for which the refund is given  
            experienced actual and anticipated losses less than the  
            premiums paid to the fund.

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32                                   **STATEMENT OF FACT**

34           This bill makes the following changes in the workers'  
            compensation laws.

36           1. The bill deregulates the voluntary market rates for  
38           workers' compensation insurance coverage.

40           2. The bill moves all of the business currently in the  
42           workers' compensation insurance residual market into the Workers'  
44           Compensation Employers' Mutual Fund, run by the Board of  
            Directors of the Workers' Compensation Employers' Mutual Fund who  
            are employers and funded 100% by the employers.