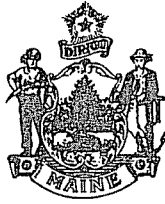


# MAINE STATE LEGISLATURE

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# 116th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1993

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Legislative Document

No. 379

H.P. 292

House of Representatives, February 9, 1993

**An Act to Require an Employer Majority on the Board of Governors of  
the Workers' Compensation Residual Market Mechanism.**

(EMERGENCY)

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

A handwritten signature in cursive script that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative MITCHELL of Vassalboro.  
Cosponsored by Senator McCORMICK of Kennebec and  
Representatives: CARLETON of Wells, ERWIN of Rumford, HALE of Sanford, HOGLUND of  
Portland, JOSEPH of Waterville, MARTIN of Eagle Lake, PINEAU of Jay, RUHLIN of Brewer,  
TRACY of Rome, Senator: CONLEY of Cumberland.

Emergency preamble. Whereas, Acts of the Legislature do not  
2 become effective until 90 days after adjournment unless enacted  
as emergencies; and

4  
Whereas, in the order of November 16, 1992, the  
6 Superintendent of Insurance found that pervasive insurer  
mismanagement had occurred in the workers' compensation residual  
8 market mechanism; and

10  
Whereas, employers have been surcharged in 1990, 1991 and  
12 1992 for deficits in the residual market mechanism, and are at  
risk of being assessed further substantial surcharges for future  
deficits; and

14  
Whereas, due to the difficulties of precisely determining  
16 the cause of any particular deficit, continued mismanagement of  
residual market mechanism funds by insurers threatens to increase  
18 the risk of assessments on employers, even though employers are  
not responsible for the mismanagement; and

20  
Whereas, in the current board of governors of the residual  
22 market mechanism, employer representatives are a minority and  
have been frustrated in their efforts to oversee and improve  
24 residual market mechanism management to minimize the risk of  
deficits; and

26  
Whereas, the insurer members of the board of governors who  
28 represent companies that contract with the residual market  
mechanism to service claims may have conflicts of interest that  
30 may interfere with their ability to control unnecessary residual  
market mechanism costs; and

32  
Whereas, the residual market mechanism is at risk of losing  
34 millions of dollars in funds due to mismanagement each month and  
it lacks effective control by a properly functioning board of  
36 directors; and

38  
Whereas, this danger of continued mismanagement harms the  
State's businesses and workers, risks increasing litigation and  
40 threatens to destabilize recent reform efforts; and

42  
Whereas, in the judgment of the Legislature, these facts  
create an emergency within the meaning of the Constitution of  
44 Maine and require the following legislation as immediately  
necessary for the preservation of the public peace, health and  
46 safety; now, therefore,

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

50 **Sec. 1. 24-A MRSA §2386, sub-§5, ¶G is enacted to read:**

2 G. beginning April 1, 1993, the plan must provide for a  
4 board of governors, which shall control the affairs and  
6 business of the residual market mechanism. The board of  
8 governors must be composed of no more than 11 members, at  
10 least 7 of whom are representatives of the business  
12 community of the State. No more than 4 members may be  
14 representatives of insurers who are members of the residual  
16 market mechanism. The total number of members of the board  
18 of governors must be an odd number.

20 (1) The insurer members of the board of governors are  
22 elected by the membership at the annual meeting of the  
24 residual market mechanism. Members of the board of  
26 governors are elected for staggered terms of 3 years.  
28 An insurer or a group of insurers under common  
30 ownership, management or control may not be elected to  
32 more than one position on the board of governors.

34 (2) The business community members of the board of  
36 governors are appointed by the superintendent for  
38 staggered terms of 3 years, with the first appointments  
40 made for one, 2 and 3 years.

42 (3) A business community member who serves on the  
44 board of governors is immune from liability for any  
46 action or inaction of that board during any period in  
which that member did not constitute the majority of the members of that board, except:

(a) When the business community member is  
adjudged to be liable by reason of willful misconduct in the performance of the duties of a board member or in the obligations to the residual market mechanism; and

(b) With respect to any criminal actions, when  
such member had reasonable cause to believe that member's own conduct to be unlawful.

The superintendent shall adopt rules to carry out the  
purposes of this paragraph.

**Emergency clause.** In view of the emergency cited in the preamble, this Act takes effect when approved.

2

## STATEMENT OF FACT

4           This bill requires that the plan of operation of the  
workers' compensation residual market mechanism include a board  
6 made up of an odd number of members, not to exceed 11 members.  
At least 7 members must represent the Maine business community.  
8 No more than 4 members may represent insurers who are  
participants in the residual market mechanism. The bill grants  
10 limited immunity from liability to business community members for  
any action or inaction of the board during a time period in which  
12 the business community members do not constitute a majority of  
the board members.  
14