

MAINE STATE LEGISLATURE

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N I N E T Y - T H I R D L E G I S L A T U R E

Legislative Document

No. 49

H. P. 64

House of Representatives, January 15, 1947

Referred to Committee on Mercantile Affairs and Insurance, sent up for concurrence and ordered printed.

HARVEY R. PEASE, Clerk

Presented by Dana Bowker of Portland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
FORTY-SEVEN

**AN ACT Relating to Fire, Marine and Inland Marine Insurance Rate
Regulation.**

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

Sec. 1. R. S., c. 56, §§ 273-290, additional. Chapter 56 of the revised statutes is hereby amended by adding thereto 18 new sections to be numbered 273 to 290, inclusive, to read as follows:

'Sec. 273. Purpose of §§ 273-290, inclusive. The purpose of sections 273 to 290, inclusive, is to promote the public welfare by regulating insurance rates to the end that they shall not be excessive, inadequate or unfairly discriminatory, and to authorize and regulate cooperative action among insurers in rate making and in other matters within the scope of said sections. Nothing in sections 273 to 290, inclusive, is intended (1) to prohibit or discourage reasonable competition, or (2) to prohibit, or encourage except to the extent necessary to accomplish the aforementioned purpose, uniformity in insurance rates, rating systems, rating plans or practices. Sections 273 to 290, inclusive, shall be liberally interpreted to carry into effect the provisions of this section.

Sec. 274. Scope of §§ 273-290, inclusive. Sections 273 to 290, inclusive, applies to fire, marine and inland marine insurance, on risks located in this

state. Inland marine insurance shall be deemed to include insurance now or hereafter defined by statute, or by interpretation thereof, or if not so defined or interpreted, by ruling of the commissioner or as established by general custom of the business, as inland marine insurance.

Sections 273 to 290, inclusive, shall not apply:

- I. To reinsurance, other than joint reinsurance to the extent stated in section 283;
- II. To insurance of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine, as distinguished from inland marine, insurance policies;
- III. To insurance of hulls of aircraft, including their accessories and equipment, or against liability arising out of the ownership, maintenance or use of aircraft;
- IV. To motor vehicle insurance nor to insurance against liability arising out of the ownership, maintenance or use of motor vehicles.

If any kind of insurance, subdivision or combination thereof, or type of coverage, subject to the provisions of sections 273 to 290, inclusive, is also subject to regulation by another rate regulation of this state, an insurer to which both regulations are otherwise applicable shall file with the commissioner, a designation as to which rate regulation shall be applicable to it with respect to such kind of insurance, subdivision or combination thereof, or type of coverage.

Sec. 275. Making of rates.

- I. Rates shall be made in accordance with the following provisions:
 - A. Manual, minimum, class rates, rating schedules or rating plans, shall be made and adopted, except in the case of specific inland marine rates on risks specially rated;
 - B. Rates shall not be excessive, inadequate or unfairly discriminatory;
 - C. Due consideration shall be given to past and prospective loss experience within and outside this state, to the conflagration and catastrophe hazards, to a reasonable margin for underwriting profit and contingencies, to dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers, to past and prospective expenses both countrywide and those specially applicable to this state, and to all other relevant factors

within and outside this state; and in the case of fire insurance rates consideration shall be given to the experience of the fire insurance business during a period of not less than the most recent 5-year period for which such experience is available.

II. Except to the extent necessary to meet the provisions of paragraph B of subsection I of this section, uniformity among insurers in any matters within the scope of this section is neither required nor prohibited.

III. Nothing in this section shall be taken to prohibit as unreasonable or unfairly discriminatory the establishment of classifications or modifications of classifications of risks based upon size, expense, management, individual experience, purpose of insurance, location or dispersion of hazard, or any other reasonable considerations, provided such classifications and modifications apply to all risks under the same or substantially similar circumstances or conditions.

IV. Nothing in sections 273 to 290, inclusive, shall abridge or restrict the freedom of contract between insurers and agents or brokers with respect to commissions or between insurers and their employees with respect to compensation.

V. Rates made in accordance with the provisions of this section may be used subject to the provisions of sections 273 to 290, inclusive.

Sec. 276. Rate filings.

I. After 90 days from the effective date of sections 273 to 290, inclusive, and at the request of the commissioner an insurer shall file, except as to inland marine risks which by general custom of the business are not written according to manual rates or rating plans, any manual, minimum, class rate, rating schedule or rating plan and any other rating rule, and every modification of any of the foregoing which it proposes to use. Every such filing shall state the effective date thereof, and shall indicate the character and extent of the coverage contemplated. When a filing is not accompanied by the information upon which the insurer supports such filing, and the commissioner does not have sufficient information to determine whether such filing meets the requirements of the provisions of sections 273 to 290, inclusive, he may require such insurer to furnish the information upon which it supports such filing. Any filing may be supported by (1) the experience or judgment of the insurer or rating organization making the filing, (2) the experience of other insurers or rating organizations, or (3) any other factors which the insurer or rating

organization deems relevant. A filing and any supporting information shall be open to public inspection after the filing becomes effective.

II. An insurer may satisfy its obligation to make such filings by becoming a member of, or a subscriber to, a licensed rating organization which makes such filings, and by authorizing the commissioner to accept such filings on its behalf; provided that nothing contained in sections 273 to 290, inclusive, shall be construed as requiring any insurer to become a member of or a subscriber to any rating organization.

III. Under such rules and regulations as he shall adopt the commissioner may, by written order, suspend or modify the requirement of filing as to any kind of insurance, subdivision or combination thereof, or as to classes of risks, the rates for which cannot practicably be filed before they are used. Such orders, rules and regulations shall be made known to insurers and rating organizations affected thereby. The commissioner may make such examination as he may deem advisable to ascertain whether any rates affected by such order meet the standards set forth in paragraph B of subsection I of section 275.

IV. Upon the written application of the insured, stating his reasons therefor, filed with and approved by the commissioner, a rate in excess of that provided by a filing otherwise applicable may be used on any specific risk.

V. Individual insurance rates in use or of record immediately before sections 273 to 290, inclusive, become effective by an insurer or by a rate making body, of which the insurer was a member or subscriber, shall be considered to be adequate, not excessive nor unfairly discriminatory until such time as such rates are replaced by rates made under the provisions of sections 273 to 290, inclusive, or for such period of time as may be necessary to accumulate data in accordance with the provisions of said sections, whichever is the shorter period of time, subject, however, to subsection I of this section.

Sec. 277. Disapproval of filings.

I. If at any time the commissioner finds that a filing does not meet the requirements of sections 273 to 290, inclusive, he shall, after a hearing held upon not less than 10 days' written notice, specifying the matters to be considered at such hearing, to every insurer and rating organization which made such filing, issue an order specifying in what respects he finds that such filing fails to meet the requirements of said sections, and stating when, within a reasonable period thereafter, such filing shall be

deemed no longer effective. Copies of said order shall be sent to every such insurer and rating organization. Said order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in said order.

II. Any person or organization aggrieved with respect to any filing which is in effect may make written application to the commissioner for a hearing thereon, provided, however, that the insurer or rating organization that made the filing shall not be authorized to proceed under this subsection. Such application shall specify the grounds to be relied upon by the applicant. If the commissioner shall find that the application is made in good faith, that the applicant would be so aggrieved if his grounds are established, and that such grounds otherwise justify holding such a hearing, he shall, within 30 days after receipt of such application, hold a hearing upon not less than 10 days' written notice to the applicant and to every insurer and rating organization which made such filing.

If, after such hearing, the commissioner finds that the filing does not meet the requirements of sections 273 to 290, inclusive, he shall issue an order specifying in what respects he finds that such filing fails to meet the requirements of said sections, and stating when, within a reasonable period thereafter, such filing shall be deemed no longer effective. Copies of said order shall be sent to the applicant and to every such insurer and rating organization. Said order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in said order.

III. No such order shall be issued by the commissioner with respect to the rate of an insurer if such rate is one used by any other insurer unless such order applies equally to all insurers using such rate; provided, however, that such order may be issued to an insurer without being applicable to all other insurers using the same rate if the basis for such order is that the insurer affected thereby could not otherwise, with safety to the public and to its policyholders, be permitted to continue to transact business.

Sec. 278. Rating organizations.

I. A corporation, an unincorporated association, a partnership or an individual, whether located within or outside this state, may make application to the commissioner for license as a rating organization for such kinds of insurance, or subdivision or class of risk or a part or combination thereof as are specified in its application and shall file therewith (1) a certified copy of its constitution, its articles of agreement or

association or its certificate of incorporation, and of its by-laws, rules and regulations governing the conduct of its business, (2) a certified list of its members and subscribers, (3) the name and address of a resident of this state upon whom notices or orders of the commissioner or process affecting such rating organizations may be served, (4) a statement of its qualifications as a rating organization and (5) a power of attorney appointing the commissioner to be the true and lawful attorney of such organization in and for this state, upon whom all lawful process in any action or proceeding against the organization other than an action or proceeding instituted by the said commissioner may be served with the same effect as if the organization existed in this state.

Whenever any process against such organization shall be served upon said commissioner he shall forthwith forward a copy of the process served on him, by mail, postpaid, and directed to the secretary of the organization.

If the commissioner finds that the applicant is competent, trustworthy and otherwise qualified to act as a rating organization and that its constitution, articles of agreement or association or certificate of incorporation, and its by-laws, rules and regulations governing the conduct of its business conform to the requirements of law, he shall issue a license specifying the kinds of insurance, or subdivision or class of risk or part or combination thereof for which the applicant is authorized to act as a rating organization. Every such application shall be granted or denied in whole or in part by the commissioner within 60 days of the date of its filing with him.

Licenses issued pursuant to this section shall remain in effect until the 1st day of the next July and annually thereafter such license may be renewed but in all cases to terminate on the 1st day of the succeeding July. The fee for said license and for each annual renewal thereof shall be \$30 and shall be subject to the same provisions regarding license fees as set forth by section 272 of this chapter.

Licenses issued pursuant to this section may be suspended or revoked by the commissioner, after hearing upon notice, in the event the rating organization ceases to meet the requirements of this subsection. Every rating organization shall notify the commissioner promptly of every change in (1) its constitution, its articles of agreement or association, or its certificate of incorporation, and its by-laws, rules and regulations governing the conduct of its business, (2) its list of members and subscribers and (3) the name and address of the resident of this state desig-

nated by it upon whom notices or orders of the commissioner or process affecting such rating organization may be served.

II. Subject to rules and regulations which have been approved by the commissioner as reasonable, each rating organization shall permit any insurer, not a member, to be a subscriber to its rating services 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 members and subscribers. 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 commissioner at a hearing held upon at least 10 days' written notice to such rating organization and to such subscriber or insurer. If the commissioner finds that such rule or regulation is unreasonable in its application to subscribers, he 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 is made, the insurer may request a review by the commissioner as if the application had been rejected. If the commissioner finds that the insurer has been refused admittance to the rating organization as a subscriber without justification, he shall order the rating organization to admit the insurer as a subscriber. If he finds that the action of the rating organization was justified, he shall make an order affirming its action.

III. No rating organization shall adopt any rule the effect of which would be to prohibit or regulate the payment of dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers.

IV. Cooperation among rating organizations or among rating organizations and insurers in rate making or in other matters within the scope of sections 273 to 290, inclusive, is hereby authorized, provided the filings resulting from such cooperation are subject to all the provisions of said sections which are applicable to filings generally. The commissioner may review such cooperative activities and practices and if, after a hearing, he finds that any such activity or practice is unfair or unreasonable or otherwise inconsistent with the provisions of sections 273 to 290, inclusive, he may issue a written order specifying in what respects

such activity or practice is unfair or unreasonable or otherwise inconsistent with the provisions of sections 273 to 290, inclusive, and requiring the discontinuance of such activity or practice.

V. Any rating organization may provide for the examination of policies, daily reports, binders, renewal certificates, endorsements or other evidences of insurance, or the cancellation thereof, and may make reasonable rules governing their submission. Such rules shall contain a provision that in the event any insurer does not within 60 days furnish satisfactory evidence to the rating organization of the correction of any error or omission previously called to its attention by the rating organization, it shall be the duty of the rating organization to notify the commissioner thereof. All information so submitted for examination shall be confidential.

VI. Any rating organization may subscribe for or purchase actuarial, technical or other services, and such services shall be available to all members and subscribers without discrimination.

Sec. 279. Deviations. Every member of or subscriber to a rating organization shall adhere to any filing made on its behalf by such organization except that any such insurer may make written application to the commissioner for permission to file a deviation from the class rates, schedules, rating plans or rules respecting any kind of insurance, or class of risk within a kind of insurance, or combination thereof. Such application shall specify the basis for the modification and a copy thereof shall also be sent simultaneously to such rating organization. The commissioner shall set a time and place for a hearing at which the insurer and such rating organization may be heard and shall give them not less than 10 days' written notice thereof. In the event the commissioner is advised by the rating organization that it does not desire a hearing he may, upon the consent of the applicant, waive such hearing. In considering the application for permission to file such deviation the commissioner shall give consideration to the available statistics and the principles for rate making as provided in section 275. The commissioner shall issue an order permitting the deviation for such insurer to be filed if he finds it to be justified and it shall thereupon become effective. He shall issue an order denying such application if he finds that the resulting premiums would be excessive, inadequate or unfairly discriminatory. Each deviation permitted to be filed shall be effective for a period of 1 year from the date of such permission unless terminated sooner with the approval of the commissioner.

Sec. 280. Appeal by minority. Any member of or subscriber to a rat-

ing organization may appeal to the commissioner from the action or decision of such rating organization in approving or rejecting any proposed change in or addition to the filings of such rating organization and the commissioner shall, after a hearing held upon not less than 10 days' written notice to the appellant and to such rating organization, issue an order approving the action or decision of such rating organization or directing it to give further consideration to such proposal, or, if such appeal is from the action or decision of the rating organization in rejecting a proposed addition to its filings, he may, in the event he finds that such action or decision was unreasonable, issue an order directing the rating organization to make an addition to its filings, on behalf of its members and subscribers, in a manner consistent with his findings, within a reasonable time after the issuance of such order.

Sec. 281. Information to be furnished insureds; hearings and appeals of insureds. Every rating organization and every insurer which makes its own rates shall, within a reasonable time after receiving written request therefor and upon payment of such reasonable charge as it may make, furnish to any insured affected by a rate made by it, or to the authorized representative of such insured, all pertinent information as to such rate. Every rating organization and every insurer which makes its own rates shall provide within this state reasonable means whereby any person aggrieved by the application of its rating system may be heard, in person or by his authorized representative, on his written request to review the manner in which such rating system has been applied in connection with the insurance afforded him. If the rating organization or insurer fails to grant or reject such request within 30 days after it is made, the applicant may proceed in the same manner as if his application had been rejected. Any party affected by the action of such rating organization or such insurer on such request may, within 30 days after written notice of such action, appeal to the commissioner, who, after a hearing held upon not less than 10 days' written notice to the appellant and to such rating organization or insurer, may affirm or reverse such action.

Sec. 282. Advisory organizations.

I. Every group, association or other organization of insurers, whether located within or outside this state, which assists insurers which make their own filings or rating organizations in rate making, by the collection and furnishing of loss or expense statistics, or by the submission of recommendations, but which does not make filings under the provisions of sections 273 to 290, inclusive, shall be known as an advisory organization.

II. Every advisory organization shall file with the commissioner

A. A copy of its constitution, its articles of agreement or association or its certificate of incorporation and of its by-laws, rules and regulations governing its activities,

B. A list of its members,

C. The name and address of a resident of this state upon whom notices or orders of the commissioner or process issued at his direction may be served, and

D. An agreement that the commissioner may examine such advisory organization in accordance with the provisions of section 284.

III. If, after a hearing, the commissioner finds that the furnishing of such information or assistance involves any act or practice which is unfair or unreasonable or otherwise inconsistent with the provisions of sections 273 to 290, inclusive, he may issue a written order specifying in what respects such act or practice is unfair or unreasonable or otherwise inconsistent with the provisions of said sections, and requiring the discontinuance of such act or practice.

IV. No insurer which makes its own filings nor any rating organization shall support its filings by statistics or adopt rate making recommendations, furnished to it by an advisory organization which has not complied with the provisions of this section or with an order of the commissioner involving such statistics or recommendations issued under the provisions of subsection III of this section. If the commissioner finds such insurer or rating organization to be in violation of this subsection he may issue an order requiring the discontinuance of such violation.

Sec. 283. Joint underwriting or joint reinsurance.

I. Every group, association or other organization of insurers which engages in joint underwriting or joint reinsurance, shall be subject to regulation with respect thereto as herein provided, subject, however, with respect to joint underwriting, to all other provisions of sections 273 to 290, inclusive, and, with respect to joint reinsurance, to sections 284 and 287 to 290, inclusive.

II. If, after a hearing, the commissioner finds that any activity or practice of any such group, association or other organization is unfair or unreasonable or otherwise inconsistent with the provisions of sections 273 to 290, inclusive, he may issue a written order specifying in what

respects such activity or practice is unfair or unreasonable or otherwise inconsistent with the provisions of said sections, and requiring the discontinuance of such activity or practice.

Sec. 284. Examinations. The commissioner shall, at least once in 5 years, make or cause to be made an examination of each rating organization licensed in this state as provided in section 278 and he may, as often as he may deem it expedient, make or cause to be made an examination of each advisory organization referred to in section 282 and of each group, association or other organization referred to in section 283. The reasonable costs of any such examination shall be paid by the rating organization, advisory organization, or group, association or other organization examined upon presentation to it of a detailed account of such costs. The officers, manager, agents and employees of such rating organization, advisory organization, or group, association or other organization may be examined at any time under oath and shall exhibit all books, records, accounts, documents, or agreements governing its method of operation. In lieu of any such examination the commissioner may accept the report of an examination made by the insurance supervisory official of another state, pursuant to the laws of such state.

Sec. 285. Rate administration.

I. Recording and reporting of loss and expense experience. The commissioner shall promulgate reasonable rules and statistical plans, reasonably adapted to each of the rating systems on file with him, which may be modified from time to time and which shall be used thereafter by each insurer in the recording and reporting of its loss and countrywide expense experience, in order that the experience of all insurers may be made available at least annually in such form and detail as may be necessary to aid him in determining whether rating systems comply with the standards set forth in section 275. 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. In promulgating such rules and plans, the commissioner shall give due consideration to the rating systems on file with him and, in order that such rules and plans may be as uniform as is practicable among the several states, to the rules and to the form of the plans used for such rating systems in other states. No insurer shall be required to record or report its loss experience on a classification basis that is inconsistent with the rating system filed by it. The commissioner may designate one or more rating organizations or

other agencies to assist him in gathering such experience and making compilations thereof, and such compilations shall be made available, subject to reasonable rules promulgated by the commissioner, to insurers and rating organizations.

II. Interchange of rating plan data. Reasonable rules and plans may be promulgated by the commissioner for the interchange of data necessary for the application of rating plans.

III. Consultation with other states. In order to further uniform administration of rate regulatory laws, the commissioner and every insurer and rating organization may exchange information and experience data with insurance supervisory officials, insurers and rating organizations in other states and may consult with them with respect to rate making and the application of rating systems.

IV. Rules and regulations. The commissioner may make reasonable rules and regulations necessary to effect the purposes of sections 273 to 290, inclusive.

V. Administrative division. For the purpose of administrating sections 273 to 290, inclusive, and any other provision of law pertaining to the regulation of insurance rates and rating organizations and for the purpose of conducting the examinations of insurance companies required by law, there is hereby set up within the office of the insurance commissioner a division to be known as the Division of Rating and Examinations. The division shall be supervised by a deputy commissioner who shall be subject to all the provisions of the personnel law and he shall receive such compensation as is provided by the rules and regulations of the personnel board for state employees in similar capacities.

Sec. 286. False or misleading information. No person or organization shall wilfully withhold information from, or knowingly give false or misleading information to, the commissioner, any statistical agency designated by the commissioner, any rating organization, or any insurer, which will affect the rates or premiums chargeable under the provisions of sections 273 to 290, inclusive. A violation of the provisions of this section shall subject the one guilty of such violation to the penalties provided in section 287.

Sec. 287. Penalties. Any person or organization wilfully violating any provision of sections 273 to 290, inclusive, shall be subject to a penalty of not more than \$500 for each such violation. Such penalty may be in addition to any other penalty provided by law.

The commissioner may suspend the license of any rating organization or insurer which fails to comply with an order of the commissioner within the time limited by such order, or any extension thereof which the commissioner may grant. The commissioner shall not suspend the license of any rating organization or insurer for failure to comply with an order until the time prescribed for an appeal therefrom has expired or if an appeal has been taken, until such order has been affirmed. The commissioner may determine when a suspension of license shall become effective and it shall remain in effect for the period fixed by him, unless he modifies or rescinds such suspension, or until the order upon which such suspension is based is modified, rescinded or reversed. No penalty shall be imposed and no license shall be suspended or revoked except upon a written order of the commissioner, stating his findings, made after a hearing held upon not less than 10 days' written notice to such person or organization specifying the alleged violation.

Sec. 288. Hearing procedure and judicial review.

I. Any insurer or rating organization aggrieved by any order or decision of the commissioner made without a hearing, may, within 30 days after notice of the order to the insurer or organization, make written request to the commissioner for a hearing thereon.

The commissioner shall hear such party or parties within 20 days after receipt of such request and shall give not less than 10 days' written notice of the time and place of the hearing. Within 15 days after such hearing the commissioner shall affirm, reverse or modify his previous action, specifying his reasons therefor. Pending such hearing and decision thereon the commissioner may suspend or postpone the effective date of his previous action.

II. Nothing contained in sections 273 to 290, inclusive, shall require the observance at any hearing of formal rules of pleading or evidence.

III. Any order or decision of the commissioner shall be subject to review by a justice of the superior court in term time or vacation by an appeal taken within 15 days after the date of such order or decision to the superior court held in and for the county of Kennebec at the instance of any party in interest and aggrieved by said order or decision. Such appeal shall be prosecuted by petition to which such party shall annex the order or decision of the commissioner and the record upon which such order or decision is based and in which the appellant shall set out the substance of and the reasons for the appeal. Upon the filing thereof the

court in term time or a justice thereof in vacation shall order notice thereof. Upon the evidence and after hearing which shall be held not less than 7 days after notice thereof, the court or a justice thereof may modify, affirm, or reverse the order or decision of the commissioner in whole or in part in accordance with law and the weight of the evidence. The court or a justice thereof shall, upon hearing, determine whether the filing of the appeal shall operate as a stay of any such order or decision of the commissioner pending the final determination of the appeal, and may impose such terms and conditions as may be deemed proper.

Exceptions shall lie to the law court from the decision of the superior court.

Sec. 289. Constitutionality. If any section, subsection, subdivision, paragraph, sentence or clause of sections 273 to 290, inclusive, is held invalid or unconstitutional, such decision shall not affect the remaining portions of said sections.

Sec. 290. Effective date. The provisions of sections 273 to 290, inclusive, shall take effect October 1, 1947.'