LAWS

OF THE

STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWELFTH LEGISLATURE

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PUBLIC LAWS

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Insurance Guarantee Association under this Act shall be stayed for 60 days from the date of notice to the Maine Self-Insurance Guarantee Association of the insolvency in order to permit the association to investigate, prosecute or defend properly any petition, claim or appeal under this Act, provided that the payment of weekly compensation for incapacity under section 54 or 55 is made whenever time periods or proceedings affecting the payment of weekly compensation are stayed.

Effective September 19, 1985.

CHAPTER 372

H.P. 1127 - L.D. 1634

AN ACT to Improve the Workers' Compensation System and Reform the Rate-making Process.

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

Whereas, the State has recognized the public benefit resulting from requiring employers within the State to provide compensation for their employees' work-related injuries but the costs to Maine employers for providing that compensation have become prohibitively high, discouraging investment in Maine businesses and the location of new business in the State; and

Whereas, the prompt restriction of rising workers' compensation costs to employers in the State is necessary to maintain the competitiveness of Maine business and industry and to thereby preserve jobs and stimulate the creation of new employment opportunities in the State; and

Whereas, the State has a high rate of occupational injury and disability and there is an immediate need for comprehensive programs to provide for greater safety education and training and for low interest loans to business to improve safety and promote healthful working conditions in Maine's factories, workshops and workplaces; and

Whereas, the Legislature recognizes that one of the primary purposes of workers' compensation should

be to restore the injured worker to good health and gainful employment, and the Legislature further recognizes that the State's present workers' compensation rehabilitation system is inadequate and requires substantial and time-consuming revisions; and

Whereas, workers' compensation insurance is a matter of vital importance to Maine's economy; and

Whereas, the method used to determine workers' compensation insurance rates affects all participants in the system, including employers who purchase insurance, insurers who provide that insurance and employees who receive benefits; and

Whereas, reform of the current ratemaking process is immediately necessary to protect the integrity of the workers' compensation system and the interests of all concerned parties; and

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

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

PART A

Sec. 1. 2 MRSA §6, sub-§7, as repealed and replaced by PL 1981, c. 705, Pt. L, §§1 to 3, is amended to read:

7. Range 83. The salaries of the following state officials and employees shall be within salary range 83:

A. Rehabilitation Administrator, Office of Employment Rehabilitation.

Sec. 2. 5 MRSA §953 is enacted to read:

§953. Workers' Compensation Commission

1. Major policy-influencing positions. The following positions are major policy-influencing positions within the Workers' Compensation Commission. Notwithstanding any other provision of law, these po-

sitions and their successor positions shall be subject to this chapter:

A. Rehabilitation Administrator, Office of Employment Rehabilitation.

Sec. 3. 5 MRSA §12004, sub-§8, ¶A, sub-¶(26) is enacted to read:

(26)	Labor	Occupational Safety Loan Review Panel	Expenses Only	26 MRSA §63

Sec. 4. 5 MRSA §12004, sub-§10, ¶A, sub-¶¶ (79) and (80) are enacted to read:

(79)	Workers' Compensation	Apportionment Review Panel	Expenses only	39 MRSA §57-B
(80)	Workers' Compensation	Employment Rehabilitation Advisory Board	Expenses only	39 MRSA §89

Sec. 5. 26 MRSA §1, sub-§§1-A and 2-A are enacted to read:

1-A. Loan fund. "Loan fund" means the Occupational Safety Loan Fund.

2-A. Safety fund. "Safety fund" means the Safety Education and Training Fund.

Sec. 6. 26 MRSA §42-A is enacted to read:

§42-A. Safety education and training programs

1. Department to establish programs. The department shall establish and supervise programs for the education and training of employers, owners, employees, educators and students in the recognition, avoidance and prevention of unsafe or unhealthful working conditions in employment. The department shall consult with and advise employers, owners, employees and organizations representing employers, owners and employees as to effective means of preventing occupational injuries and illnesses.

2. Safety education and training program functions. The functions of the safety education and training program shall include:

A. The development and application of a statewide safety education and training program to familiarize employers, supervisors, employees and union leaders with techniques of accident investigation and prevention;

B. The development and utilization of consultative educational techniques to achieve long-range solutions to occupational safety and health problems;

C. The acquisition, development and distribution of occupational safety and health pamphlets, booklets, brochures and other appropriate safety and health media as may be useful to accomplish the objectives of this section;

D. The development and administration of a program for employers, with special emphasis on small business employers, providing technical and educational assistance on matters of occupational safety and health;

E. The development and implementation of a training and education program for department staff engaged in the administration and enforcement of this section; and

F. The conduct of other activities as necessary for the implementation of an effective safety education and training program.

3. Programs provided upon request. The department shall provide safety training programs, upon request, for employees and employers. Priority for the development of safety training programs shall be in those occupations which pose the greatest hazard to the safety and health of employees.

4. Continuing research. The department may conduct continuing research into methods, means, operations, techniques, processes and practices necessary for improvement of occupational safety and health of employees.

5. Consulting services. The department shall, upon request, provide a full range of occupational safety and health consulting services to any employer or employee group. These consulting services may include providing employers or employees with information, advice and recommendations on maintaining safe employment or places of employment, and on applicable

occupational safety and health standards, techniques, devices, methods, practices or programs.

6. Contract. The department may contract with others to perform these functions.

Sec. 7. 26 MRSA c. 4 is enacted to read:

CHAPTER 4

OCCUPATIONAL HEALTH AND SAFETY

§61. Safety Education and Training Fund

1. Fund established. To accomplish the objectives outlined in section 42-A, there is established in the State Treasury a special fund, known as the Safety Education and Training Fund. The safety fund shall be administered by the commissioner. The department shall have authority over the safety fund and may do all things necessary or convenient in the administration of the safety fund and shall formulate and adopt rules, pursuant to the Maine Administrative Procedure Act, Title 5, chapter 375, governing its administration and maintenance, and perform all other functions which the laws of this State specifically authorize or which are necessary or appropriate. All money and securities in the safety fund shall be held in trust by the Treasurer of State for the purpose of funding the safety education and training program under section 42-A and shall not be money or property for the general use of the State. The fund shall not lapse. The Treasurer of State shall notify the commissioner and the Legislature of interest credited and the balance of the safety fund as of June 30th of each year.

2. Source of funds. The commissioner shall annually assess a levy based on the total actual annual workers' compensation paid losses, excluding medical payments, paid in the previous calendar year by employers under Title 39, the Workers' Compensation Act. As soon as practicable after July 1, 1985, the commissioner shall assess upon and collect from each insurance carrier licensed to do workers' compensation business in the State, and from each self-insured employer authorized to make workers' compensation payments directly to their employees, an amount equal to 1/4 of 1% of the total workers' compensation benefits, exclusive of medical payments, paid by the insurance carrier or self-insured employer during the previous calendar year. As soon as

practicable after July 1, 1986, and each year thereafter, the commissioner shall assess upon and collect from each carrier and self-insured employer a sum equal to that proportion of the current fiscal year's appropriation, exclusive of any federal funds, for the safety education and training division which the total workers' compensation benefits, exclusive of medical payments, paid by each carrier or each self-insured employer, bears to the total of the benefits paid by all carriers and self-insured employers, during the previous calendar year, except that the total amount levied annually may not exceed 1/4 of 1% of the total of the compensation benefits paid by all carriers and self-insured employers during the previous calendar year.

3. Notice of assessments. The Commissioner of Labor shall send notice of the assessments by certified mail to each carrier and self-insured employer. Payment of assessments must be received in the principal office of the Department of Labor before a date specified in the notice, but not more than 90 days after the date of the mailing.

4. Assessments constitute element of loss. The levy assessment shall constitute an element of loss for the purpose of establishing rates for workers' compensation insurance. Funds derived from this levy shall be deposited in the safety fund and shall be appropriated by the Legislature for the operation of this division.

§62. Occupational Safety Loan Fund

1. Establishment of fund. There is established in the State Treasury a special fund known as the Occupational Safety Loan Fund, for the sole purpose of making loans in accordance with section 63, and of providing funds for the administration of that section. The loan fund shall be administered by the commissioner. The department shall have authority over the loan fund and may do all things necessary or convenient in the administration of the loan fund and shall formulate and adopt rules pursuant to the Maine Administrative Procedure Act, Title 5, chapter 375, governing the administration, maintenance, loan disbursements and loan repayments and collections of the loan fund, and perform all other functions which the laws of this State specifically authorize or which are necessary or appropriate. All money and securities in the loan fund shall be held in trust by the Treasurer of State for the purposes of the loan program established under section 63 and shall not be

money or property for the general use of the State. The Treasuer of State shall invest the money of the fund in accordance with law. The fund shall not lapse.

2. Loans from fund. The loan fund may make loans in accordance with section 63.

3. Source of fund. The loan fund shall be established and maintained by funds received from the following:

A. Repayments of loans made by the loan fund and accrued interest on those loans;

B. Interest, income and dividends from investments made by the Treasurer of State under subsection 1; and

C. Payments pursuant to subparagraph (1).

(1) The commissioner shall assess a levy based on the total actual workers' compensation premiums paid in 1984 by employers under Title 39, the Workers' Compensation Act. As soon as practicable after July 1, 1985, the commissioner shall assess upon and collect from each insurance carrier licensed to do workers' compensation business in the State an amount equal to 1/2 of 1% of the total workers' compensation insurance premiums paid to that insurance carrier during 1984 by employers in the State. The levy assessment shall constitute an element of loss for the purpose of establishing rates for workers' compensation insurance.

(a) The Commissioner of Labor shall send notice of the assessments by certified mail to each carrier and self-insured employer. Payment of assessments must be received in the principal office of the Department of Labor before a date specified in the notice, but not more than 90 days after the date of the mailing.

§63. Occupational safety loans

The department may administer a statewide program to make low interest loans to improve safety and promote healthful working conditions in factories, work-

shops and workplaces in this State. This program shall be known as the Occupational Safety Loan Program.

1. Loan criteria. The department shall promulgate rules to implement the Occupational Safety Loan Program which shall include, but not be limited to, the following loan criteria:

A. The purpose of the loan must be to improve, install or erect equipment which reduces hazards to and promotes the health and safety of workers;

B. No more than a total of $350,000 may be loaned from the fund in each fiscal year;

C. No loan may be made in an amount in excess of $15,000 to any single applicant, nor at a fixed interest rate in excess of a rate equal to 2 percentage points below the prime rate in effect in the Boston metropolitan area;

D. A majority vote of the loan review panel is necessary to recommend approval of a loan which shall then be transmitted to the department for final disposition in accordance with the policies adopted by the department;

E. Loan applications shall be reviewed by both the loan review panel and the department for feasibility, such as, for the general reasonableness and safety need for the proposal, whether the applicant has sufficient capital, whether an adequate safety analysis or other counseling requirement has been completed, whether the applicant is credit worthy within the scope of this program and whether the collateral offered to secure the loan is adequate;

F. Loans are not insured or guaranteed by the State, but the department shall require collateral in the form of security for the loan, if available, and may, in appropriate cases, take a mortgage on real estate;

G. Loan applications must be on forms and accompanied by additional information as required by the department. Loan applicants may be required to submit whatever personal or business related financial information as may be necessary to determine eligibility for the Occupational Safety Loan Program; and

H. Loans may not be approved without a prior safety inspection by the division of industrial safety and a recommendation by the division for the installation of the safety device.

2. Loan review panel. The Occupational Safety Loan Review Panel as established by Title 5, section 12004, subsection 8, shall consist of 6 members of which 5 shall be appointed by the Governor. Of the 5 appointed members of the panel, one shall represent employers; one shall represent employees; one shall represent an insurance company licensed to insure workers' compensation within the State; and 2 shall represent the public. The 6th member of the board shall be the commissioner. The term of office for the appointed members shall be 4 years. In the first appointment, 2 shall be appointed for a term of 2 years, 2 shall be appointed for a term of 3 years and one shall be appointed for a term of 4 years. The chairman shall be elected biennially by the members of the board. Each member shall hold office until his successor is duly appointed and qualified.

In case of a vacancy in board membership, the Governor shall appoint a member of the proper classification to fill the unexpired term of the absent member.

The board shall meet at least twice yearly at the State Capitol or any other place designated by the chairman.

The 5 appointed members of the board shall be compensated according to Title 5, chapter 379. The chairman of the board shall approve and countersign all vouchers for expenditures under this section.

3. Administration. The department may contract with the Finance Authority of Maine to assist in the administration of the program, with compensation to the Finance Authority of Maine to be paid out of amounts in the loan fund.

§64. Coverage

1. Application of chapter. This chapter applies to all employers, employees and places of employment in the State except employees of the Federal Government.

2. Construction. Nothing in this chapter may be construed to supersede or in any manner affect any workers' compensation law or to enlarge, diminish or affect in any manner common law or statutory rights,

duties or liabilities of employers or employees under any law with respect to injuries, diseases or death of employees arising out of and in the course of employment.

Sec. 8. 39 MRSA §2, sub-§10, as enacted by PL 1975, c. 701, section 23-A, is amended to read:

10. Dependent of another person. For purposes of the payment or the termination of compensation ~~pursuant to~~ under section ~~58~~ 58-A, a widow or widower of a deceased employee shall be the dependent of another person when over half of his or her support during a calendar year was provided by the other person.

Sec. 9. 39 MRSA §51-B, sub-§3, as amended by PL 1983, c. 682, §1, is further amended to read:

3. Compensation for incapacity. The first payment of compensation for incapacity under section ~~54~~ 54-A or ~~55~~ 55-A is due and payable within 14 days after the employer has notice or knowledge of the injury or death. In cases where the employee did not lose time from work within 5 scheduled work days following the injury, compensation for incapacity under section ~~54~~ 54-A or ~~55~~ 55-A is due and payable within 14 days of the date the employee asserts to the employer that that lost time is related to the injury. Subsequent incapacity compensation benefit payments shall be made weekly and in a timely fashion.

Sec. 10. 39 MRSA §51-B, sub-§10, as enacted by PL 1983, c. 479, §7, is amended to read:

10. Penalty for nonpayment. If a claim to compensation has not been controverted and any payment of compensation payable without an award is not paid within 7 days after it becomes due, the commission shall assess a penalty equal to 10% of the amount due.

The penalties provided in this subsection shall be assessed against the insurer or self-insurer, whichever the case may be. The penalties shall be paid to the ~~Second Injury~~ Employment Rehabilitation Fund created by section ~~57~~ 57-B. No penalty under this subsection may be assessed where it is shown to the commission that the delay in payment or filing resulted from conditions over which the insurer or self-insurer has no control if the insurer or self-insurer proves that it acted in good faith and with reasonable diligence.

Sec. 11. 39 MRSA §52, 6th ¶, as amended by PL 1977, c. 278, §1, is repealed.

Sec. 12. 39 MRSA §52, sub-§§1 and 2 are repealed.

Sec. 13. 39 MRSA §52, sub-§3, as amended by PL 1977, c. 696, §405, is repealed.

Sec. 14. 39 MRSA §52, 7th ¶, as amended by PL 1977, c. 278, §2, is further amended to read:

Whenever there is any disagreement as to the proper costs of the services or aids, or the periods during which they shall be furnished, or as to the apportionment thereof among the parties, any interested person may file a petition with the commission for the determination thereof. ~~The term "educational rehabilitation" includes post-secondary, college and university instruction.~~

Sec. 15. 39 MRSA §53-A is enacted to read:

§53-A. Maximum benefit levels

The maximum weekly benefit payable under section 54-A, 55-A or 58-A is $447.92. Beginning on July 1, 1988, this maximum benefit level shall be adjusted annually so that it continues to bear the same percentage relationship to the state average weekly wage, as computed by the Maine Unemployment Insurance Commission, as it did on July 1, 1987.

Sec. 16. 39 MRSA §54, as amended by PL 1983, c. 479, §8, is further amended by adding at the end a new paragraph to read as follows:

This section does not apply to injured employees governed by section 54-A.

Sec. 17. 39 MRSA §54-A is enacted to read:

§54-A. Compensation for total incapacity

While the incapacity for work resulting from the injury is total, the employer shall pay the injured employee a weekly compensation equal to 2/3 his average gross weekly wages, earnings or salary, but not more than the maximum benefit under section 53-A, nor less than $25 weekly. This weekly compensation shall be adjusted annually so that it continues to bear the same percentage relationship to the state average weekly wage, as computed by the Maine Unemployment

Insurance Commission, as it did at the time of the injury, but in no case may the annual adjustment exceed the lesser of 5% or the actual percentage increase in the state average weekly wage for the previous year.

In the following cases it shall, for the purpose of this Act, be conclusively presumed that the injury resulted in permanent total incapacity: The total and irrevocable loss of sight of both eyes; the loss of both hands at or above the wrist; the loss of both feet at or above the ankle; the loss of one hand and one foot; an injury to the spine resulting in permanent and complete paralysis of the arms or legs; or an injury to the skull resulting in incurable inbecility or insanity. In the event of such permanent total incapacity, the employer shall pay the employee a weekly compensation equal to 2/3 his average gross weekly wages, earnings or salary, but not more than the maximum benefit under section 53-A, nor less than $25 weekly. This weekly compensation shall be adjusted annually so that it continues to bear the same percentage relationship to the state average weekly wage, as computed by the Maine Unemployment Insurance Commission, as it did at the time of the injury, but in no case may the annual adjustment exceed the lesser of 5% or the actual percentage increase in the state average weekly wage for the previous year. If the totally incapacitated employee dies, as a result of this injury, leaving dependents who were dependent upon his earnings at the time of his injury, then payments shall be made to the dependents in accordance with section 58-A.

The annual adjustment required by this section shall be made on the anniversary date of the injury, except that where the effect of the maximum under section 53-A is to reduce the amount of compensation to which the claimant would otherwise be entitled, the adjustment shall be made annually on July 1st.

This section applies only to employees injured on and after the effective date of this section.

1. Sheltered workshops. The $25 weekly minimum compensation limitation under this section does not apply to a handicapped individual who is employed by a sheltered workshop, as that term is defined in Title 5, section 1816, subsection 11, paragraph A, subparagraph (2), and who claims compensation under this section.

Sec. 18. 39 MRSA §55, as amended by PL 1983, c. 479, §9, is further amended by adding at the end a new paragraph to read as follows:

This section does not apply to injured employees governed by section 55-A.

Sec. 19. 39 MRSA §55-A is enacted to read:

§55-A. Compensation for partial incapacity

While the incapacity for work resulting from the injury is partial, the employer shall pay the injured employee a weekly compensation equal to 2/3 the difference, due to the injury, between his average gross weekly wages, earnings or salary before the injury and the weekly wages, earnings or salary which he is able to earn after the injury, but not more than the maximum benefit under section 53-A. This weekly compensation shall be adjusted annually so that it continues to bear the same percentage relationship to the state average weekly wage, as computed by the Maine Unemployment Insurance Commission, as it did at the time of the injury, but in no case may the annual adjustment exceed the lesser of 5% or the actual percentage increase in the state average weekly wage for the previous year. The annual adjustment required by this section shall be made on the anniversary date of the injury, except that where the effect of the maximum under section 53-A is to reduce the amount of compensation to which the claimant would otherwise be entitled, the adjustment shall be made annually on July 1st.

This section applies only to employees injured on and after the effective date of this section.

Sec. 20. 39 MRSA §56, as amended by PL 1979, c. 541, Pt. A, §§279 and 280, is further amended to read:

§56. Compensation for particular injuries; permanent impairment

In addition to the benefits provided for in sections ~~54 and 55~~ 54-A and 55-A, when an employee sustains an injury which is included in the following schedule, the incapacity in each case shall be deemed to be total for the period specified and the injured employee shall receive a lump sum payment for ~~said~~ that injury which shall be determined by multiplying ~~the~~ an amount ~~to which he would be entitled weekly for total incapacity as determined under section 54,~~

equal to 2/3 of the state average weekly wage as computed by the Maine Unemployment Insurance Commission by the period of presumed total incapacity set forth in this section. The specific periods of presumed total incapacity because of injuries specified in this section ~~shall~~ be are as follows:

For the loss of a thumb, 50 weeks.

For the loss of the first finger, commonly called the index finger, 32 weeks.

For the loss of the 2nd finger, commonly called the middle finger, 28 weeks.

For the loss of the 3rd finger, commonly called the ring finger, 20 weeks.

For the loss of the 4th finger, commonly called the little finger, 17 weeks.

The loss of the distal (second) phalanx of the thumb or the distal (third) phalanx of any finger shall be considered to be equal to the loss of 1/2 of said thumb or finger, and the compensation therefor shall be 1/2 the amount above specified. The loss of more than one phalanx shall be considered as the loss of the entire thumb or finger. In no case shall the amount received for the loss of a thumb and more than one finger of the same hand exceed the amount specified in this schedule for the loss of a hand.

For the loss of the great toe, 25 weeks.

For the loss of one of the toes other than the great toe, 10 weeks.

For the loss of the distal (second) phalanx of the great toe or of the distal (third) phalanx of any other toe shall be considered to be equal to the loss of 1/2 of said great toe or any other toe, and the compensation therefor shall be 1/2 the amount above specified. The loss of more than one phalanx shall be considered as the loss of the entire toe.

For the loss of a hand, 165 weeks.

For the loss of an arm, or any part thereof above the wrist, 200 weeks.

For the loss of a foot, 165 weeks.

For the loss of a leg, or any part thereof above the ankle, 200 weeks.

For the loss of an eye, or the reduction of the sight of an eye, with glasses, to 1/10 of the normal vision, or for diplopia, 100 weeks.

For the loss of both eyes, or the reduction of the sight of both eyes, with glasses, to 1/10 of the normal vision, or for diplopia, 300 weeks.

For the total and permanent loss of hearing in one ear, 50 weeks.

For the total and permanent loss of hearing in both ears, 200 weeks.

In all other cases of injury to the above-mentioned members, eyes or hearing where the usefulness of any physical function thereof is permanently impaired, the specific compensable periods for presumed total incapacity on account ~~thereof~~ of the injury shall bear ~~such~~ the same relation to the periods ~~above~~ specified above as the percentage of permanent impairment due to the injury to such members, eyes or hearing ~~shall bear~~ bears to the total loss thereof. The commission upon petition ~~therefor~~ by either party shall determine ~~such~~ this percentage. A petition for determination of the percentage of permanent hearing impairment due to an injury shall be filed with the commission within 2 years from the date of the injury.

The commission may award proper and equitable compensation for serious facial or head disfigurement not to exceed ~~$7,500~~ 2/3 of the state average weekly wage, as computed by the Maine Unemployment Insurance Commission, multiplied by 50, including a disfigurement continuous in length which is partially in the facial area and also extends into the neck region. The commission, if in its opinion the earning capacity of an employee has been or may in the future be impaired, may award compensation for any serious disfigurement in the region above the sterno clavicular articulations anterior to and including the region of the sterno cleido mastoid muscles on either side, but no award for the total disfigurement as set forth ~~shall~~ may, in the aggregate, exceed ~~$7,500~~ 2/3 of the state average weekly wage, as computed by the Maine Unemployment Insurance Commission, multiplied by 50. Notwithstanding any other provision hereof, 2 or more serious disfigurements, not continuous in length, resulting from the same injury, if partially in the fa-

cial area and partially in the neck region as described in the preceding sentence, shall be deemed to be a facial disfigurement.

Sec. 21. 39 MRSA §56-A, as amended by PL 1973, c. 392, §2, is further amended to read:

§56-A. -- Injuries

In addition to the benefits provided for in sections ~~54 and 55~~ 54-A and 55-A, when an employee sustains an injury which is included in the following schedule, the incapacity in each case shall be deemed to be total for the period specified and the injured employee shall receive a lump sum payment for ~~said~~ that injury which shall be determined by multiplying ~~the~~ an amount ~~to which he would be entitled weekly for total incapacity as determined under section 54,~~ equal to 2/3 of state average weekly wage as computed by the Employment Security Commission by the period of presumed total incapacity set forth in this section. The specific periods of presumed total incapacity because of injuries specified in this section ~~shall be~~ are as follows:

Total loss of function of

Neck: 100 weeks

Back: 200 weeks

Jaw: 40 weeks

Genito-urinary organs: 100 weeks

In all other cases of injury to the above-mentioned parts of the body where the usefulness of any physical function thereof is permanently impaired, the specific compensable periods for presumed total incapacity on account ~~thereof~~ of the injury shall bear ~~such~~ the same relation to the periods ~~above~~ specified above as the percentage of permanent impairment due to the injury to such parts of the body ~~shall bear~~ bears to the total loss thereof. The commission upon petition ~~therefor~~ by either party shall determine ~~such~~ this percentage.

~~Such~~ The determination by the commission ~~shall~~ must be based upon reasonably demonstrable medical or clinical findings.

Sec. 22. 39 MRSA §57, sub-§8 is enacted to read:

8. Applicability. This section does not apply to cases in which reimbursement is available from the Employment Rehabilitation Fund under section 57-B.

Sec. 23. 39 MRSA §§57-B and 57-C are enacted to read:

§57-B. Employment Rehabilitation Fund

1. Panel. The Apportionment Review Panel, as established by Title 5, chapter 379, shall be composed of 2 employee representatives, 2 employer or insurer representatives and one member representing medical or rehabilitation professionals.

A. The members shall be appointed by the Governor for terms of 3 years, except that initially one shall be appointed for a term of one year, 2 for terms of 2 years and 2 for terms of 3 years.

B. The Governor shall select one member to serve as chairman.

C. Members shall serve without compensation, except for reimbursement for travel and actual expenses necessarily incurred in performance of their duties.

D. If a matter with which a member has any connection comes before the panel, that member shall excuse himself from hearing the matter.

E. The panel's recommendation must be by majority vote.

2. Payment for certain injuries. If an employee who has completed an approved rehabilitation program under section 83, subsequently sustains a personal injury arising out of and in the course of employment and that injury, in combination with the prior injury, results in a reduction in earning capacity which is substantially greater in duration or degree, or both, than that which would have resulted from the subsequent injury alone, taking into account the age, education, employment opportunities and other factors related to the employee, the employer at the time of the subsequent injury is entitled to reimbursement from the Employment Rehabilitation Fund as provided in this section. An employer is not entitled to reimbursement from the fund in the event of subsequent injury if an injured employee returns to his preinjury job with the same employer without the pro-

vision of significant rehabilitation services or significant modification of the workplace.

3. Reimbursement. The employer shall be reimbursed at least quarterly from the Employment Rehabilitation Fund for any weekly wage replacement benefits for which he is liable under section 54-A, 55-A or 58-A, and which are paid by that employer.

A. An employer entitled to reimbursement under this section remains liable to the employee for all payments otherwise required from him by this Act and remains responsible for carrying out the rehabilitation efforts required by subchapter III-A as a result of the subsequent injury.

B. A commissioner shall order a reduction, suspension or termination of reimbursement of an employer under this section if the commissioner finds that the employer has not made a bona fide effort to return the employee to continuing gainful employment.

4. Apportionment. Reimbursement under this section shall be reduced by the amount of any contribution paid to the employer by any other employer for wage replacement benefits on the basis of apportioned liability under section 104-B.

A. If insurers disagree on the apportionment of liability in a case under this section, the matter must be considered by the Apportionment Review Panel before an insurer may file a petition under section 104-B. The panel shall encourage agreement between the insurers and, if agreement cannot be achieved, shall make a recommendation on the apportionment of liability.

5. Employer knowledge. An employer otherwise entitled to reimbursement under this section is entitled to that reimbursement regardless of whether the employer has knowledge at any time that the employee had completed an approved rehabilitation plan.

6. Hiring incentive; wage credit. If an employer hires an employee after the employee has completed an approved rehabilitation program under section 83, that subsequent employer may apply for a wage credit under this subsection. For the purposes of this subsection, the term "employer" does not include the insurer of a subsequent employer or the same employer for whom an employee worked when he sustained the injury for which he received rehabilitation.

A. The subsequent employer must file an application for a wage credit by providing the administrator, within 2 weeks after the close of the first 90 days of employment of the employee, with a statement of the total direct wages, earnings or salary he paid to the employee for the first 90 days of employment along with such verification as may be required by rule of the commission. Within 2 weeks after the close of the first 180 days of employment, the subsequent employer must provide to the administrator a supplemental report of the direct wages, earnings and salary for the 2nd 90-day period, along with the required verification.

B. The administrator shall compute the wage credit which shall consist of a sum equal to 50% of the average weekly direct wages, earnings or salary for the 90-day period listed in the subsequent employer's application or statement, but not to exceed the amount of workers' compensation benefits which the employee did not receive because of the employment, but would have been entitled to for the wage credit period, based on the average weekly workers' compensation benefits during the most recent 60-day period in which he did receive benefits preceding his hiring by the employer.

(1) On adequate verification of the application or statement, the administrator shall pay the amount for each 90-day period in a lump sum to the subsequent employer within 30 days of receiving the application or statement.

(2) The administrator shall bill these sums to the insurer or self-insurer that was responsible for payment of the compensation received by the employee immediately before his hiring by the subsequent employer. When the sum is received from the insurer or self-insurer, the administrator shall deposit it in the Employment Rehabilitation Fund.

C. If the employment with the subsequent employer is terminated by the employer without good cause before the completion of 12 consecutive months of employment, the subsequent employer shall return to the administrator all wage credits received by him for that employee and all sums paid into the Employment Rehabilitation Fund

by the insurer or self-insurer shall be returned to that insurer or self-insurer.

D. When the wage credit is paid from the fund to an employer, the insurer or self-insurer who paid the sum into the fund has no further obligation to pay any sums into the fund for any future re-employment of that employee, except as provided in paragraph E.

E. Wage credits shall apply to trial work periods with a subsequent employer under a rehabilitation plan.

(1) Total wage credit payments under a plan may not exceed a period of 180 days, not including periods subject to refunds under paragraph C.

(2) The commission shall inform subsequent employers of the number of days of wage credits available, if it is less than 180 days.

F. Wage credit payments are not dependent on the receipt by the fund of payments from an insurer or self-insurer.

7. Jurisdiction. The commission has jurisdiction over all claims brought against the Employment Rehabilitation Fund.

A. The fund is not bound as to any question of law or fact by reason of any award or any adjudication to which it was not a party or in relation to which it was not notified, at least 21 days prior to the award or adjudication, that it might be subject to liability for the injury or death.

B. An employer shall notify the commission of any possible claim for subsequent injury reimbursement against the Employment Rehabilitation Fund as soon as practicable, but in no event later than one year after the injury or death. Failure to provide timely notice shall bar the claim.

8. Legal representation. The Attorney General shall provide legal representation for any claim made under this section.

A. The reasonable expense of prosecution or defense by the Attorney General of claims against

the Employment Rehabilitation Fund shall, subject to the approval of the commission, be payable out of the Employment Rehabilitation Fund.

B. The Attorney General shall not defend the Employment Rehabilitation Fund against any claim brought by the State. The commission may hire, using money from the Employment Rehabilitation Fund, private counsel for this purpose.

9. Effect on obligations of prior employers. The availability of reimbursement under this section does not limit or reduce the obligation of any previous employer to provide benefits under this Act to the employee.

10. Fund administration and contributions. There is established a special fund, known as the Employment Rehabilitation Fund, for the sole purpose of making payments in accordance with this chapter. The fund shall be administered by the chairman of the commission. The Treasurer of State shall be the custodian of the fund. All money and securities in the fund shall be held in trust by the Treasurer of State for the purpose of making payments under this chapter and shall not be money or property for the general use of the State. The fund shall not lapse.

The Treasurer of State may disburse money from the fund only upon written order of the chairman of the commission. The Treasurer of State shall invest the money of the fund in accordance with law. Interest, income and dividends from the investments shall be credited to the fund.

11. Freedom from liability. The State is not liable for any claim against the Employment Rehabilitation Fund that is in excess of the fund's current ability to pay. If any employer's claim against the fund is denied due to an inadequate fund balance, that employer's claim is entitled to priority over later claims when an adequate balance is restored.

12. Rulemaking. The chairman may adopt rules, subject to section 92, subsection 1, to carry out the purposes of this section.

13. Applicability. Reimbursement under this section is available solely with respect to employees who are injured and rehabilitated after the effective date of this section. If reimbursement is available

from the Employment Rehabilitation Fund under this section, reimbursement shall not be available from the Second Injury Fund under section 57.

§57-C. Assessment

1. Rate of assessment. There is levied and imposed an assessment on each insurer at the rate of 1/2% in 1986, and 1% thereafter, of its actual paid losses during the previous calendar quarter.

2. Due date. The assessment imposed by this section is due on or before the 60th day after the close of the calendar quarter.

3. Assessment waived. If, at the end of a calendar quarter, the amount of deposit in the Employment Rehabilitation Fund is equal to or exceeds the amount derived from the last assessment, the assessment for that quarter shall be waived and not levied or imposed.

A. The Treasurer of State shall notify the State Tax Assessor on the day after the end of the calendar quarter, if the fund equals or exceeds that amount.

B. If so notified, the State Tax Assessor shall immediately notify each insurer that the assessment is waived for that quarter.

4. Records and reports. Every insurer shall keep as part of his permanent records a record of the amount of each loss paid and its date and the records shall be open for inspection at all times. Every insurer shall, on or before the 60th day following the end of a calendar quarter, render a report to the State Tax Assessor stating the amount of losses paid by him during the preceding calendar quarter. That report shall contain any further information the State Tax Assessor shall prescribe by rule. With that report, each insurer shall forward payment of the assessment amount due.

5. Appropriation of money received. The State Tax Assessor shall pay all receipts from that assessment to the Treasurer of State daily. The Treasurer of State shall deposit all receipts as received in the Employment Rehabilitation Fund.

6. Inspections. The State Tax Assessor or his duly authorized agent, for the purpose of determining

the truth or falsity of any statement or return made by the insurer, may:

A. Enter any place of business of an insurer to inspect any books or records of the insurer;

B. Notwithstanding any other provision of law, inspect any records or reports filed by an insurer with the Superintendent of Insurance; and

C. Delegate these powers to the Superintendent of Insurance, his deputies, agents or employees.

7. Civil action. Whenever any insurer fails to pay any assessment due under this section within the time limit, the Attorney General shall enforce payment by civil action against that insurer for the amount of the assessment in the Superior Court in and for the county or the District Court in the division in which that insurer has his place of business, or in the Superior Court of Kennebec County.

8. Definition. For the purposes of this section, "insurer" means an insurance company or association which does business or collects premiums for workers' compensation insurance in this State or an individual or group self-insurer under this Act, including the State and other public or governmental authority.

Sec. 24. 39 MRSA §58, as amended by PL 1983, c. 479, §10, is further amended by adding at the end a new paragraph to read as follows:

This section does not apply to injured employees governed by section 58-A.

Sec. 25. 39 MRSA §58-A is enacted to read:

§58-A. Death benefits; apportionment

If death results from the injury, the employer shall pay the dependents of the employee, dependent upon his earnings for support at the time of his injury, a weekly payment equal to 2/3 his average gross weekly wages, earnings or salary, but not more than the maximum benefit under section 53-A, nor less than $25 weekly from the date of death until the time provided for in subsection 2. This weekly compensation shall be adjusted annually so that it continues to bear the same percentage relationship to the state average weekly wage, as computed by the Maine Unemployment Insurance Commission, as it did at the time

of the injury, but in no case may the annual adjustment exceed the lesser of 5% or the actual percentage increase in the state average weekly wage for the previous year. The annual adjustment required by this section shall be made on the anniversary date of the injury, except that where the effect of the maximum under section 53-A is to reduce the amount of compensation to which the claimant would otherwise be entitled, the adjustment shall be made annually on July 1st.

This section applies only to employees injured on and after the effective date of this section.

1. Sheltered workshops. The $25 weekly minimum compensation limitation under this section does not apply to a handicapped individual who is employed by a sheltered workshop, as that term is defined in Title 5, section 1816, subsection 11, paragraph A, subparagraph (2), and who claims compensation under this section.

2. Determination of recipients. If the dependent of the employee to whom compensation will be payable upon his death is the widow of the employee, upon her death or at the time she becomes a dependent of another person, compensation to her shall cease and the compensation which would otherwise have been payable to her shall be paid to the child or children, if any, of the deceased employee, including adopted and stepchildren under the age of 18 years, or over that age but physically or mentally incapacitated from earning, who are dependent upon the widow at the time of her death or dependency. If the dependent is a widower, upon his death or at the time he becomes a dependent of another person, the remainder of the compensation which would otherwise have been payable to him shall be payable to the children specified in this subsection, if any, who are dependent upon him at the time of his death or dependency. If there is more than one dependent child, the compensation shall be divided equally among them. Except in the case of dependents who are physically or mentally incapacitated from earning, compensation payable to any dependent child under the age of 18 years shall cease upon that child's reaching the age of 18 years or upon marriage.

3. Partial dependency. If the employee leaves dependents only partly dependent upon his earnings for support at the time of his injury, the employer shall pay those dependents a weekly compensation equal to the same proportion of the weekly payments

provided in this section for the benefit of dependent persons, as the total amount contributed by the employee to those partial dependents for their support during the year before his injury bears to the earnings of the employee during that period.

Sec. 26. 39 MRSA §62-B is enacted to read:

§62-B. Coordination of benefits

1. Application. This section applies when weekly compensation is payable to an employee under section 54-A or 55-A for any period for which he is receiving or has received old age insurance benefit payments under the United States Social Security Act, United States Code, Title 42, Sections 301 to 1397f, or payments under an employee benefit plan.

2. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "After tax amount" means the gross weekly amount of any old age insurance benefit or benefit under an employee benefit plan, reduced by the prorated weekly amount which would have been paid, if any, in social security, federal income and state income taxes, calculated on an annual basis. The after tax amount of any benefits subject to income taxes shall be determined by using the maximum number of dependents' allowances to which the employee is entitled and the standard deduction or zero bracket amount applicable to the employee's filing status. The chairman of the commission shall, by rule, adopt and publish tables governing the determination of after tax amounts under this subsection.

B. "Employee benefit plan" means a self-insurance disability plan, wage continuation plan, disability insurance plan and a pension or retirement plan which is funded or paid for by the employer in whole or in part. It does not include disability insurance under the United States Social Security Act.

3. Coordination of benefits. Benefit payments subject to this section shall be reduced in accordance with the following provisions.

A. The employer's obligation to pay weekly compensation under section 54-A or 55-A shall be reduced by:

(1) Fifty percent of the amount of old age insurance benefits received or being received under the United States Social Security Act;

(2) The after tax amount of the payments received or being received under an employee benefit plan provided by the same employer by whom benefits under section 54-A or 55-A are payable if the employee did not contribute directly to the plan; and

(3) The proportional amount, based upon the ratio of the employer's contributions to the total contributions, of the after tax amount of the payments received or being received by the employee under an employee benefit plan provided by the same employer by whom benefits under section 54-A or 55-A are payable if the employee did contribute directly to the plan.

B. No reduction in weekly compensation may be made if benefits received under an employee benefit plan are required to be reduced to reflect the receipt of benefits under this Act.

C. No reduction in weekly compensation may be made as a result of any increase granted by the United States Social Security Administration as a cost-of-living adjustment.

D. Weekly compensation may be reduced to no less than 10% of the amount due to the employee under section 54-A or 55-A or to a minimum weekly payment of $7 after reduction under this section, whichever is greater.

4. Release of information. Within 14 days after the date of the first payment of compensation under section 54-A or 55-A or 14 days after the date of application for any benefits subject to coordination under this section, whichever is later, the employee shall, upon request, provide the employer with a certificate authorizing the employer to obtain any benefit information necessary to comply with this section. If, at any subsequent time, the employer is required to submit a new certificate in order to receive that information, a new certificate shall be provided upon request within 14 days. All certificates for the release of information shall be in a form prescribed by the commission. If the employee

fails to provide a properly executed certificate, the employer may, with the approval of the commission, suspend all benefit payments until the certificate is provided. Any benefits so withheld shall be paid to the employee once the required certificate is provided, subject to any reductions authorized by this section.

5. Reports. Any employer making a reduction under this section shall immediately report to the commission the amount of the reduction to be taken and, as required by the commission, furnish satisfactory proof of the basis for the reduction.

Sec. 27. 39 MRSA §66-A, 6th ¶, as enacted by PL 1981, c. 474, §3, is amended to read:

If any injured employee refuses to accept an offer of suitable work, the employer or insurer may, in addition to exercising any other rights it may have, file a petition for a reduction of benefits. If, after hearing, the commission finds that an employee refused to accept the offer and the position offered was suitable to his physical condition, it shall order the reduction of all benefits payable under sections ~~54~~ 54-A and ~~55~~ 55-A. The reduction shall be in an amount equal to the difference between the employee's weekly benefit and the benefits he would have been entitled to receive if he had accepted the offer. The order reducing benefits shall remain in effect only as long as the employee fails to accept the offer of suitable work.

Sec. 28. 39 MRSA §66-A, as amended by PL 1983, c. 647, is further amended by adding at the end a new paragraph to read:

All obligations under this section are suspended during the implementation of a rehabilitation plan under subchapter III-A.

Sec. 29. 39 MRSA c. 1, sub-c. III-A is enacted to read:

SUBCHAPTER III-A

REHABILITATION

§81. Purpose; rules

The purpose of this subchapter is restoration of the injured employee to gainful employment. To fur-

ther that purpose, it is the shared responsibility of all parties involved to cooperate in developing a rehabilitation process designed to promote reemployment at a level of earnings commensurate with the employee's ability to perform under present conditions, consistent with the priorities of section 86.

The chairman may adopt rules, subject to section 92, subsection 1, to carry out the purposes of this subchapter.

§82. Office of Employment Rehabilitation; Rehabilitation Administrator

1. Office of Employment Rehabilitation; appointment. An Office of Employment Rehabilitation shall be maintained under the direction of a rehabilitation administrator, in this subchapter referred to as the "administrator." The chairman may appoint and remove the administrator and assistant administrators with the concurrence of the commission. The administrator shall report to and be directed by the chairman and shall carry out the duties assigned to the administrator in this Act.

2. Qualifications. The rehabilitation administrator must be certified as a certified rehabilitation counselor by the Commission on Rehabilitation Counselor Certification or must become certified as such within 10 months after the date of hiring, must be qualified by training or by experience in management of rehabilitation evaluation services and must be familiar with the workers' compensation system.

3. Powers and duties. In addition to any other provisions made in this chapter, the administrator has the following powers and duties.

A. The administrator is responsible for the receipt of reports and other information required under this subchapter and may require supplementary information needed to fulfill the purposes of this subchapter.

B. The administrator shall monitor rehabilitation cases and cases where rehabilitation appears to be appropriate, and shall encourage agreement and attempt to conciliate differences on rehabilitation issues.

C. The administrator shall approve agreements regarding rehabilitation if he finds that they are consistent with the purpose and requirements

of this subchapter and the rules of the commission.

D. The administrator shall assist the chairman in developing rules under section 92, subsection 1, regarding rehabilitation, including, but not limited to, rules governing minimum standards for providers of rehabilitation services, the types of services each category of provider is qualified to provide and procedures for rehabilitation cases.

E. The commission shall not provide direct rehabilitation services. Rehabilitation services under this subchapter shall be provided by private and public rehabilitation counselors, governmental agencies, in-house rehabilitation counselors and others approved by the administrator as qualified to provide rehabilitation services under the commission's rules. The administrator shall consider a rehabilitation counselor's rate of successfully placing rehabilitated employees in jobs relative to the placement rates of other counselors in the State as fundamental in deciding whether to approve the counselor as qualified. The administrator shall compile annually a list of approved providers of rehabilitation services, except that in-house rehabilitation counselors shall not appear on the list, and shall make this list available to the parties.

F. The administrator shall develop fee schedules for providers of rehabilitation services, listing the maximum allowable fees for testing, evaluations of suitability, development of rehabilitation plans and other rehabilitation services.

(1) In setting a fee, the administrator shall take into account the usual fee charged to provide that service in the State and the reasonable and necessary costs of providing the service.

(2) The administrator may grant prior approval of a fee higher than the maximum in the rate schedule in exceptional circumstances.

(3) Fee schedules developed under this paragraph do not apply to services provided by in-house providers of rehabilitation services.

G. The administrator shall make efforts to educate and disseminate information to all persons interested in the rehabilitation process.

§83. Rehabilitation services

Except as provided in section 84, the following rehabilitation services are appropriate in the following circumstances.

1. Reports. Within 120 days following an injury which gives rise to a claim under this Act, or within 120 days following the first day of a subsequent period of incapacity due to that injury, where an employee has not returned to his previous employment, the employer shall submit a report to the administrator to assist in the early identification of those employees who may need rehabilitation to achieve job placement.

A. The report shall be in the form prescribed by rule of the commission and shall include information to the best of the employer's knowledge on whether the employee is likely to return to his previous employment and any other information required by the rule.

B. The report shall be forwarded to the administrator and a copy provided to the employee.

C. If the employer is unable to determine whether the employee is likely to return to his previous employment, the employer shall include in the report a date by which he expects this determination to be made and the basis for selecting that date.

D. If the employer reports that the employee is likely to return to his previous employment, the employer shall include in the report the date by which he expects the employee to return to work and the basis for selecting that date.

E. In either instance, the employer shall file a supplemental report under this subsection on or before that date unless the administrator requires otherwise.

2. Evaluation of suitability. An evaluation of the suitability of rehabilitation for the employee shall be submitted to the administrator within 30 days after the administrator makes an order of evaluation under section 85, subsection 1.

A. The evaluation of suitability shall be done by a provider of rehabilitation services selected by the employee from the list of approved providers maintained by the administrator.

B. If the employer objects to the employee's selection, he may request within 10 business days after notification of that selection that the administrator schedule a meeting within 10 business days between the employer, the employee and the administrator for the purpose of discussing which provider may be mutually acceptable.

C. The employee shall have the final decision on which approved provider shall be utilized.

3. Development of plan. A rehabilitation plan shall be developed and submitted to the administrator within 60 days after the administrator makes an order of plan development under section 85, subsection 2.

A. The plan shall be developed by a provider of rehabilitation services selected by the employee from the list of approved providers maintained by the administrator.

B. In developing any plan, consideration shall be given to the employee's qualifications, including, but not limited to:

(1) His work history;

(2) His interests;

(3) His aptitude;

(4) His education;

(5) His skills;

(6) His work life expectancy;

(7) The locality of employment; and

(8) The likelihood of reemployment.

C. A plan shall include a job placement strategy and a specific program of proposed actions designed and likely to achieve job placement for the employee.

(1) The plan development shall consider and the plan may include a provision for trial work periods not to exceed 3 months with the employer or subsequent employer.

(2) The administrator may approve trial work periods as part of a plan.

4. Implementation of plan. The administrator shall approve a plan if all parties agree on the plan and he finds it is consistent with the purpose and requirements of this subchapter and in the employee's best interests.

A. If the parties do not agree on a plan, an informal conference shall be held within 21 days after the submission of the rehabilitation plan under subsection 3, at which the administrator shall make every effort to encourage agreement and conciliate any differences or misunderstandings between the parties.

B. All obligations under section 66-A are suspended during the implementation of the plan.

5. Trial work periods. The time requirements of this section are suspended if a trial work period under section 100-A is instituted at any time during the schedule of rehabilitation services established under this section. If the trial work period terminates within the agreed upon period, the schedule of rehabilitation services established under this section shall be resumed at the same point at which it was suspended.

6. Representation. The administrator shall ensure that competent technical staff from the Office of Employment Rehabilitation is available to provide advice and assistance to the employee.

7. Counsel. If the employer or insurer elects to be represented by legal counsel at any stage of the rehabilitation process under this subchapter prior to an appeal under section 88, the employee is entitled to be similarly represented by legal counsel of his choice, with all reasonable attorneys' fees to be assessed against the employer. If no adverse party elects to be so represented, the employee retains the right to secure legal counsel at his own expense.

§84. In-house rehabilitation programs

1. Applicability. This section applies to all employers in the State which maintain, on January 1, 1986, a certified rehabilitation counselor on premises to provide rehabilitation services that meet the requirements of this subchapter. These services must be provided only to their own employees.

In-house providers of rehabilitation services under this section must be approved by the rehabilitation administrator under section 82, subsection 3, paragraph E. For the purposes of this section, the term "employer" does not include an insurance carrier.

2. In-house rehabilitation procedure. The provisions of this section shall be followed instead of any inconsistent provisions under section 83 for any rehabilitation efforts undertaken by an in-house provider of rehabilitation services. Provisions of this subchapter not inconsistent with this section also apply to in-house rehabilitation efforts.

A. Instead of the employee choosing his own provider of rehabilitation services, an in-house provider of rehabilitation services may conduct the suitability evaluation and develop a rehabilitation plan as required under section 83 for any injured employee of the employer. If the in-house provider does not provide both of these services to an employee, rehabilitation of that employee shall proceed as otherwise provided under section 83.

B. If the parties do not agree to the implementation of the plan, an informal conference shall be held under section 83, subsection 4, paragraph A. If no agreement can be reached between the parties, the administrator shall determine if the plan meets the requirements and purposes of this subchapter. If he finds that it does, and that it is in the employee's best interests, he shall order the implementation of the plan for a period of 30 days. At the end of this period, the employee shall notify the administrator within 10 days that he chooses to either continue with the plan or terminate the plan and resume the rehabilitation process with the provider of rehabilitation services of his choice at the plan development stage under section 83, subsection 3.

3. Reimbursement. Reimbursement from the Employment Rehabilitation Fund under section 87, subsection 6, is not available to employers for in-house rehabilitation efforts.

§85. Orders

It is appropriate for the administrator to issue the following orders in the following circumstances.

1. Order of evaluation. When a compensable injury exists, and when the parties agree to an evaluation or the report required under section 83, subsection 1, indicates that the employee is not likely to return to his previous employment, the administrator shall order an evaluation of the suitability of rehabilitation for the employee.

2. Order of plan development. When the administrator finds that rehabilitation is suitable for the employee following the submission of an evaluation of suitability under section 83, subsection 2, he shall order the parties to develop a rehabilitation plan.

3. Order of plan review or modification. Upon request of a party or the administrator, reports of an employee's progress under a rehabilitation plan shall be made by the provider of rehabilitation services to all the parties and the administrator. The administrator, upon request of any party or on his own motion, may order the suspension, termination or modification of a plan upon a showing of good cause, including, but not limited to:

A. A changed physical condition which does not allow the employee to continue pursuing the rehabilitation plan;

B. The employee's performance level indicates he cannot complete the plan successfully;

C. An employee does not cooperate with a plan;

D. A change in the economic conditions that existed when plan implementation began renders the plan unfeasible; or

E. The employer and employee agree on the proposed plan suspension, termination or modification.

4. Reinstatement of benefits. If the administrator orders the suspension or termination of a plan, he may also order the reinstatement of the employee's weekly benefits in the amount being paid prior to the commencement of the plan if that termination or suspension is for the reasons given under subsection 3, paragraph A, B, D or E.

5. Procedures. The administrator shall make any order under this subchapter within 30 days. Resolutions must be based on adequate information and arrived at in a summary manner.

A. The administrator is not to be bound by the Maine Rules of Evidence or the Maine Rules of Civil Procedure, except to the extent that may be provided in the commission's rules to protect the interests of the parties.

B. The order shall be filed in the office of the commission, and a copy of the order attested by the clerk of the commission mailed immediately to all parties interested and to the attorney of record of each party.

C. The administrator shall, upon the request of a party made as a motion within 20 days after notice of the order, or may upon his own motion find the facts specially and state separately his conclusions of law thereon. Those findings and conclusions shall be filed in the office of the commission and a copy of the findings and conclusions shall be mailed immediately to all interested parties.

D. The running of the time for appeal under section 88 is stopped by a timely motion made under this section. The full time for this appeal recommences on the receipt of notice of the filing of those findings, conclusions or revised order.

§86. Rehabilitation priorities

The following priorities shall be used in evaluating alternative rehabilitation plans. No higher numbered priority may be utilized unless all lower numbered priorities have been determined by the rehabilitation counselor to be unlikely to result in a suitable job placement for the employee. If a lower number priority is clearly inappropriate for the employee, the next higher numbered priority shall be utilized as follows:

1. Former job. Return of the employee to his preinjury job with the same employer;

2. Modified job. Return of the employee to his preinjury job with the same employer and with modification of tasks or of the workplace;

3. New job. Return to employment with the preinjury employer in a different position;

4. On-the-job training. Return to employment with the preinjury employer for on-the-job training;

5. New employer. Employment with a new employer;

6. On-the-job training. On-the-job training with a new employer; or

7. Retraining. A goal-oriented period of formal retraining which is designed to lead to employment.

§87. Rights and duties of parties

1. Medical examinations. The provisions of section 65 shall apply during any period of rehabilitation.

2. Plan costs. A plan may provide for any or all of the following services and costs:

A. Reasonable rehabilitation diagnosis and plan preparation;

B. Physical rehabilitation, counseling and other services and supplies necessary for the implementation of the plan;

C. Tuition, books and fees, and a sum each week for sustenance and travel not to exceed 25% of the statewide average weekly wage, as may be determined by the administrator during the period of rehabilitation;

D. Reasonable moving and relocation expenses, not to exceed $3,000, that are necessary to achieve reemployment;

E. Compensation up to the amount payable for total incapacity during the course of a rehabilitation plan; and

F. Reasonable and proper rehabilitation services, which in some cases may extend over long periods of time, and the nature and anticipated duration shall be defined during the process of plan development and included in the plan.

3. Notice of controversy. An employer who considers the costs of rehabilitation services to be unreasonable may file a notice of controversy with the administrator for determination thereof.

4. Employee refusal, sanctions. Refusal by the employee to comply with a requirement, determination or order of the commission, this chapter or a rule promulgated under this chapter, or with the terms of an approved plan or agreement under this subchapter, shall result in the suspension of benefits for a period no longer than the length of the refusal. These sanctions may only be ordered by a commissioner after notice and a hearing.

5. Employer refusal; sanctions. Refusal of the employer to comply with a requirement, determination or order of the commission, this chapter or a rule promulgated thereto, or with the terms of an approved plan or agreement under this subchapter, shall be deemed a failure to pay compensation subject to section 104-A, subsection 2. The commissioner or the employee may seek enforcement under section 103-E.

6. Reimbursement. Reimbursement may not be ordered for any payments which the employer would otherwise be obligated to make regardless of the existence of the plan; except that the administrator shall order reimbursement from the Employment Rehabilitation Fund for the actual direct costs to the employer of providing rehabilitation services during the implementation of a rehabilitation plan under this subchapter, if:

A. He finds that:

(1) The parties have complied with the requirements of this subchapter;

(2) The employee has completed an approved rehabilitation plan; and

(3) The employee has been unable to secure the employment contemplated by the plan or other suitable employment within 6 months or such longer period as contained in the plan or ordered by the administrator; or

B. He finds that:

(1) The employee has not completed an approved rehabilitation plan; and

(2) The parties have otherwise complied with the requirements of this subchapter.

§88. Appeal from a decision of the administrator

1. Procedure. An appeal may be taken from an order of the administrator by filing a copy of the order, together with any papers in connection therewith required by rule of the commission, with a single commissioner within 20 days after receipt of notice of the filing of the order. The failure of an appellant who timely notifies the commission of his desire to appeal to provide a copy of the order appealed from does not affect the jurisdiction of the division to determine the appeal on its merits, unless the appellee shows substantial prejudice from that failure.

2. Automatic stay; stay upon appeal. No proceedings may be taken to enforce an order of the administrator until the time for appeal from the order has expired. The taking of an appeal from an order shall operate as a stay of execution upon the order during the pendency of the appeal.

3. Action. The commissioner, after due consideration, may uphold or modify the administrator's decision or reverse the decision and remand the matter to the administrator for reconsideration in accordance with his instructions. The written decision of the commissioner shall be filed with the commission and mailed to the parties and their counsels.

4. Costs. Costs of appeal shall be allowed, including the record and reasonable attorneys' fees as provided for in section 110. No attorney who represents an employee who prevails before the commission may recover any fee from that client for that representation. Any attorney who violates this subsection shall lose his fee and is liable in a court suit to pay damages to the client equal to 2 times the fee charged that client.

§89. Employment Rehabilitation Advisory Board

The Employment Rehabilitation Advisory Board, as established by Title 5, chapter 379, shall advise the chairman and the administrator as they carry out the purposes of this subchapter.

1. Membership. The board shall consist of 9 members with knowledge of and experience in workers' compensation and rehabilitation issues, including

equal representation of employer and employee viewpoints; and one member representing the public.

2. Appointment. The members shall be appointed by the Governor for terms of 3 years, except that initially 3 shall be appointed for terms of one year, 3 for terms of 2 years and 3 for terms of 3 years.

3. Chairman. The Governor shall select one member to serve as chairman.

4. Compensation. Members shall serve without compensation, except for reimbursement for travel and actual expenses necessarily incurred in performance of their duties.

§90. Applicability

1. Employees covered. The provisions of this subchapter apply only to employees injured after the effective date of this subchapter, unless otherwise agreed by the parties and approved by the administrator. Notwithstanding any such agreement, the provisions of section 87, subsection 6, shall not be construed to permit reimbursement for any rehabilitation services provided prior to the effective date of this subchapter.

2. Sunset. This subchapter is repealed, effective July 1, 1988, except that the chairman may by rule provide for a transition period of employment for the administrator of up to 3 years and for the disposition according to this subchapter of cases arising out of injuries suffered during the period in which this subchapter is effective. The money in the Employment Rehabilitation Fund shall remain in that fund until all obligations against that fund under this subchapter have been paid, and thereafter the balance remaining shall be paid to the Second Injury Fund.

3. Report to Legislature. The chairman shall report to the Second Regular Session of the 113th Legislature concerning the effectiveness of this subchapter in accomplishing the purpose stated in section 81. The chairman may seek the assistance of the administrator, the Superintendent of Insurance and others in assembling data which would provide the Legislature with a meaningful basis for evaluating the costs and benefits of this subchapter to all participants in the process and the public as a whole.

Sec. 30. 39 MRSA §92, sub-§6, as enacted by PL 1983, c. 479, §16, is amended to read:

6. Office of Employee Assistants. The chairman shall provide adequate funding for an Office of Employee Assistants and shall, subject to the Personnel Law, appoint the assistants to staff the Augusta office and district offices. Assistants are not attorneys, but should demonstrate a level of expertise roughly equivalent to that of insurance claims' analysts. The purpose of employee assistants is to provide advice and assistance to employees under this Act, and particularly to assist employees in preparing for and assisting at informal conferences under section 94-B. In addition, if an employer appeals a decision of the commission or institutes any proceeding against an employee under this Act, the Office of Employee Assistants shall, upon request, advise an employee how to best prepare for and proceed with his case.

No employee of the Office of Employee Assistants may represent before the commission any insurer, self-insurer, group self-insurer, adjusting company or self-insurance company for a period of 2 years after terminating employment with the office.

The chairman shall appoint 6 employee assistants. After January 1, 1984, the chairman may appoint up to 4 additional assistants if, in the chairman's judgment, the additional assistants are necessary to effectuate the purposes of this subsection.

Employee assistants shall be paid a salary equal to that paid to state employees in professional and technical range 21.

Sec. 31. 39 MRSA §92, sub-§§8 and 9 are enacted to read:

8. Office of Employment Rehabilitation. The chairman shall provide adequate funding for an Office of Employment Rehabilitation and shall appoint a Rehabilitation Administrator under section 82. The chairman shall, subject to the Personnel Law, appoint such personnel as are necessary to carry out the functions of the office.

9. Abuse investigation unit. The chairman shall provide adequate funding for a Unit of Abuse Investigation.

A. He shall, subject to the Personnel Law, appoint at least 2 abuse investigators for this unit. Investigators must be qualified by experience and training to perform their duties.

B. The unit shall, at the direction of the chairman, investigate all complaints or allegations of fraud, illegal or improper conduct or violation of this Act or rules of the commission relating to workers' compensation insurance, benefits or programs, including those acts by employers, employees or insurers.

C. Each employer or employee, and each state, county, municipal or quasi-governmental agency shall cooperate fully with the unit and provide any information requested by it.

D. The unit shall report all its findings to the chairman.

E. Whenever the chairman determines that a fraud, attempted fraud or violation of this Act or rules may have occurred, he shall report in writing all information concerning it to the Attorney General or his delegate for appropriate action, including a civil action for recovery of funds and criminal prosecution by the Attorney General.

Sec. 32. 39 MRSA §93, sub-§3, as amended by PL 1979, c. 109, is further amended to read:

3. Proceedings before Workers' Compensation Commission. In all proceedings before the Workers' Compensation Commission, all forms of discovery available in civil actions in the Superior Court under the Maine Rules of Civil Procedure, as amended, ~~shall~~ be are available to any of the parties in the proceedings except that a ~~Workers' Compensation Commission Commissioner, rather than a Superior Court Justice,~~ the chairman may, by rule adopted under section 92, prescribe different time periods for the completion of discovery in cases where it is necessary to ensure that hearings may be held within the time periods prescribed by this Act. A commissioner shall rule on all objections, ~~and a Workers' Compensation Commission Commissioner is empowered to~~ and may enforce this subsection in the same manner and to the same extent as a Superior Court Justice may enforce compliance with the Maine Rules of Civil Procedure, as amended, with regard to discovery, except that the

commissioner ~~shall~~ does not have the power of contempt.

~~Prior to the award of the 3rd period of up to 52 weeks of vocational rehabilitation as provided by section 52, the employer shall have the right of discovery and subpoena power in regard to all persons, including any private or public agent, to determine the suitability of such employee for such further rehabilitation.~~

Signed statements by a medical doctor or osteopathic physician relating to medical questions, by a psychologist relating to psychological questions or by a chiropractor relating to chiropractic questions, ~~shall~~ be are admissible in workers' compensation hearings before the Workers' Compensation Commission, providing that notice of that testimony to be used is given and service of a copy of the letter or report is made on the opposing counsel 14 days before the scheduled hearing to enable that counsel to depose or subpoena and cross-examine that medical doctor, osteopathic physician, psychologist or chiropractor if he so chooses.

Sec. 33. 39 MRSA §94, 2nd ¶, as amended by PL 1973, c. 788, §232, is repealed.

Sec. 34. 39 MRSA §94-A, sub-§3, as enacted by PL 1983, c. 479, §19, is repealed and the following enacted in its place:

3. Construction. In interpreting this Act, the commission shall construe it so as to ensure the efficient delivery of compensation to injured workers at a reasonable cost to employers. All workers' compensation cases shall be decided on their merits and the rule of liberal construction shall not apply to those cases. Accordingly, this Act is not to be given a construction in favor of the employee, nor are the rights and interests of the employer to be favored over those of the employee.

Sec. 35. 39 MRSA §100, sub-§1, as enacted by PL 1981, c. 514, §4, is amended to read:

1. Relief available. Upon the petition of either party, a single commissioner shall review any compensation payment scheme required by this Act for the purposes of ordering the following relief, as the justice of the case may require:

A. Increase, decrease, restoration or discontinuance of compensation; ~~or~~.

~~B. Extension, reduction, restoration or discontinuance of vocational rehabilitation.~~

Sec. 36. 39 MRSA §100, sub-§2, ¶A, as enacted by PL 1981, c. 514, §4, is amended to read:

A. On the first petition for review brought by a party to an action, the commissioner shall determine the appropriate relief, if any, under this section by determining the employee's present degree of incapacity ~~or need of vocational rehabilitation~~. For purposes of a first petition brought under this section, evidence of the employee's medical condition at the time of an earlier determination or approved agreement is relevant only if it tends to prove the present degree of incapacity.

Sec. 37. 39 MRSA §100, sub-§3-A is enacted to read:

3-A. Petitions during rehabilitation. A petition may not be brought during the development or implementation of a rehabilitation plan under section 83, subsection 3 or 4, except in the event of substantial change in the employee's medical condition.

Sec. 38. 39 MRSA §100, sub-§4, as amended by PL 1983, c. 479, §24, is further amended to read:

4. Payments pending hearing and decision. If the employee is receiving payments ~~or vocational rehabilitation~~ at the time of the petition, the payments ~~or rehabilitation~~ may not be decreased or suspended pending the hearing and final decision upon the petition, except in the following circumstances:

A. The employer and the employee file an agreement with the commission; or

B. The employer or his insurance carrier files a certificate with the commission stating that:

(1) The employee has left the State for reasons other than returning to his permanent residence at the time of injury;

(2) The employee's whereabouts are unknown; or

(3) The employee has resumed work.

Sec. 39. 39 MRSA §100-A, as amended by PL 1983, c. 479, §25, is repealed and the following enacted in its place:

§100-A. Orders or agreements for trial work periods

The commission may approve an agreement of the parties to a trial work period at a specified job for a period not to exceed 3 months. During this trial work period and the payment of wages for that work, the payment of compensation under a compensation payment scheme and all obligations under subchapter III-A shall be suspended.

1. Restoration of benefits. That suspension shall cease and weekly compensation shall be restored in the amount being paid prior to the commencement of the trial work period immediately upon:

A. Termination of employment during the first trial work period; or

B. With the second or subsequent trial work period, the filing of a petition by the employee stating that he has attempted a trial work period and was unable to adequately perform during the period.

The provisions on restoration also apply to a trial work period under section 83.

Sec. 40. 39 MRSA §103-B, sub-§4, as enacted by PL 1981, c. 514, §6, is amended to read:

4. Costs. ~~Costs~~ If the employee prevails, costs of appeal shall be allowed, including the record, and including reasonable attorneys' fees as provided for under section 110. No attorney who represents an employee who prevails in an appeal before the division may recover any fee from that client for that representation. Any attorney who violates this paragraph shall lose his fee and is liable in a court suit to pay damages to the client equal to 2 times the fee charged that client.

Sec. 41. 39 MRSA §103-C, sub-§4, as enacted by PL 1981, c. 514, §6, is amended to read:

4. Costs. In all cases of appeal to the Law Court in which the employee prevails, it may order a reasonable allowance to be paid to the employee by

the employer for expenses incurred in the proceedings of the appeal, including the record, but not including expenses incurred in other proceedings in the case. Reasonable attorneys' fees shall be allowed as provided for under section 110. No attorney who represents an employee who prevails in an appeal before the court may recover any fee from that client for that representation. Any attorney who violates this paragraph shall lose his fee and is liable in a court suit to pay damages to the client equal to 2 times the fee charged that client.

Sec. 42. 39 MRSA §106, first ¶, as amended by PL 1975, c. 293, §4, is further amended to read:

Whenever any employee has reported to an employer under the Act any injury arising out of and in the course of his employment which has caused the employee to lose a day's work or has required the services of a physician, or whenever the employer has knowledge of any such injury, every such employer shall within 7 days after said notice or knowledge make report thereof to the commission, with the average weekly wages or earnings of such employee, together with such other particulars as the commission may require; and shall report whenever the injured employee shall resume his employment, and the amount of his wages or earnings at such time. ~~If at the end of a period of 6 months following the date of injury or the date of amputation of any member, or the date of loss of one or both eyes or the loss of hearing in one or both ears, the employee is still incapacitated, every such employer shall make a report thereof to the commission, on such form as the commission shall prescribe, giving full information as to the date and nature of the original injury and a description of the physical handicap resulting from such injury. Upon receipt of such notice from the employer, or upon any knowledge or notice received prior to such notice, the commission shall forthwith refer such case to the Division of Vocational Rehabilitation of the Department of Human Services, or in cases of blindness to the Division of Eye Care and Special Services of the Department of Human Services, and may thereafter cooperate and work with these divisions in the matter of rehabilitation of the injured employee.~~ Any employer who willfully neglects or refuses to make any report required by this section shall be subject to a penalty of not more than $100 for each such neglect or refusal, to be enforced by the commission in a civil action in the name of the State. In the event the employer has sent the report to the insurance carrier for transmission by such insurance

carrier to the commission, the insurance carrier willfully neglecting or refusing to transmit the report shall be liable for the said penalty.

Sec. 43. 39 MRSA §110, as amended by PL 1983, c. 479, §30, is repealed and the following enacted in its place.

§110. Witness and attorney's fees allowable

1. Injuries prior to effective date of section. When the commission or commissioner finds that an employee has instituted proceedings under this chapter on reasonable grounds and in good faith or that the employer through or under his insurance carrier has instituted proceedings under this chapter, the commission or commissioner may assess the employer costs of witness fees and a reasonable attorney's fee, when in the commission's or commissioner's judgment the witnesses and the services of the attorney were necessary to the proper and expeditious disposition of the case. The employer may not be assessed costs of an attorney's fee attributable to services rendered prior to one week after the informal conference under section 94-B or, if the informal conference is waived, services rendered prior to the date of that waiver, unless a party adverse to the employee was so represented at that stage.

No attorney representing an employee in a proceeding under this Act may receive any fee from that client for an appearance before the commission, including preparation for that appearance, except as provided in section 94-B, subsection 3. Any attorney who violates this paragraph shall lose his fee and shall be liable in a court suit to pay damages to the client equal to 2 times the fee charged for that client.

Notwithstanding any other provision of this subsection, the employer may be assessed a reasonable attorney's fee for services rendered to the employee in executing an agreement under section 100, subsection 4, paragraph A.

This subsection does not apply to injured employees governed by subsection 2.

2. Injuries on or after effective date of section. If an employee prevails in any proceeding involving a controversy under this Act, the commission or commissioner may assess the employer costs of a reasonable attorney's fee and witness fees whenever

the witness was necessary for the proper and expeditious disposition of the case.

The employer may not be assessed costs of an attorney's fee attributable to services rendered prior to one week after the informal conference under section 94-B or, if the informal conference is waived, services rendered prior to the date of that waiver, unless a party adverse to the employee was so represented at that stage.

No attorney representing an employee who prevails in a proceeding under this Act may receive any fee from that client for an appearance before the commission, including preparation for that appearance, except as provided in section 83, subsection 7 and section 94-B, subsection 3. Any attorney who violates this paragraph shall lose his fee and be liable in a court suit to pay damages to his client equal to 2 times the fee charged for that client.

This subsection applies only to employees injured on and after the effective date of this subsection.

A. For the purposes of this subsection, "prevail" means to obtain or retain more compensation or benefits under the Act than were offered to the employee by the employer in writing before the proceeding was instituted. If no such offer was made, "prevail" means to obtain or retain compensation or benefits under the Act.

B. Any employee, employer or insurance carrier involved in any proceeding involving a controversy under this Act shall report to the commission, on forms provided by the commission, any amounts that he has paid for legal assistance in that proceeding, including any amount paid for an employee's legal fees under this subsection.

Sec. 44. 39 MRSA §112, as amended by PL 1977, c. 696, §409, is further amended by adding at the end a new paragraph to read as follows:

This section does not apply to injured employees governed by section 112-A.

Sec. 45. 39 MRSA §112-A is enacted to read:

§112-A. Inadmissible statements

No statement of any kind made by the injured employee to any investigator, employer or employer's

representative, whether oral or written, recorded or unrecorded, may be admitted into evidence or considered in any way in any proceeding under this Title, if it was obtained by means of duress on the part of the investigator, employer or employer's representative.

1. Duress defined. For the purpose of this section, duress is not limited to its common law definition, but includes:

A. Implied or expressed threats relating to the employment of the employee or the employment of a relative of the employee;

B. Implied or expressed threats of extensive litigation and appeals of the employee's claim;

C. Misleading, false or incomplete statements of law or any misleading, false or incomplete legal opinion given to the employee relating to his eligibility for benefits under this Act;

D. Misleading, false or incomplete statements of fact knowingly made to the employee;

E. Taking unfair advantage of an employee's physical, mental or economic problems or shortcomings; and

F. Interrogations or investigations conducted under such circumstances as to be severely intimidating to the employee.

This section does not apply to agreements for the payment of compensation made under the Workers' Compensation Act or to the admissibility of statements to show compliance with the notice requirements of sections 63 and 64.

This section applies only to employees injured on and after the effective date of this section.

Sec. 46. 39 MRSA §188, as amended by PL 1977, c. 696, §413, is further amended to read:

§188. Partial incapacity

Compensation shall be payable for partial incapacity due to occupational diseases as provided in section 55 55-A of the Workers' Compensation Act.

Sec. 47. 39 MRSA §189, as amended by PL 1971, c. 376, is further amended to read:

§189. Compensation limits

Compensation for partial or total incapacity or death from occupational disease shall be payable in the same manner and amounts as provided in sections ~~54, 55 and 58~~ 54-A, 55-A and 58-A. Compensation shall not be payable for incapacity by reason of occupational diseases unless such incapacity results within 3 years after the last injurious exposure to such disease in the employment.

Sec. 48. 39 MRSA §194-B, sub-§8, ¶¶B and C, as enacted by PL 1983, c. 428, §2, is amended to read:

B. If an employee is determined to be entitled to compensation for periods of total or partial incapacity occurring on or after October 1, 1983, or if a dependent of an employee is determined to be entitled to full or partial death benefits for periods occurring on or after October 1, 1983, and the employee became incapacitated or died on or after January 1, 1972, and before October 1, 1983, then the initial weekly compensation paid shall be equal to the compensation that would have been paid had compensation payments begun at the time the employee became incapacitated or died and that compensation had been adjusted annually as provided in former sections 54, 55 and 58, whichever section is applicable. This subsection shall not be interpreted as providing for any adjustment for inflation in excess of the adjustment provided in former sections 54, 55 and 58.

C. If an employee becomes incapacitated or dies on or after October 1, 1983, but before June 30, 1985, then compensation shall be payable in the same manner and amounts as provided in former sections 54, 55 and 58. If an employee becomes incapacitated or dies on or after June 30, 1985, then compensation shall be payable in the same manner and amounts as provided in sections 54-A, 55-A and 58-A.

Sec. 49. Loan fund report. The Commissioner of Labor and the Treasurer of State shall report to the Legislature on January 1, 1987 describing in detail:

1. Who had received loans under the Occupational Safety Loan Program established by the Maine Revised Statutes, Title 26, chapter 4;

2. The amount of money each loan had been for;

3. What the loan money had been used by that person for;

4. Who had applied for and not received loans;

5. The methods used to prioritize loan requests, if any; and

6. The current status of the Occupational Safety Loan Fund and the rates of loan repayment and default.

The commissioner shall also report on the continued need and demand for the loan program, whether the program requires additional funding and possible methods of providing any additional funds, if necessary.

Sec. 50. Medical cost study. The Joint Standing Committee on Labor is directed to conduct a study of the effects of medical and other health-treatment fees on the cost of providing workers' compensation coverage in the State. The study shall be completed by March 31, 1986, and shall include suggested legislation to be presented to the Second Regular Session of the 112th Legislature or suggested rules to be adopted by the Chairman of the Workers' Compensation Commission.

Study is needed to determine if rising medical and other health-treatment fees related to the treatment of employment injuries are a contributing factor to rising workers' compensation costs as a whole and, if so, what specific aspects of treatment or fees are responsible for that increase. If medical and other health-treatment fees appear to the committee to be a contributing cause of rising workers' compensation costs, the committee shall study methods of limiting the cost increases due to those fees. The committee shall study the feasibility of set fee schedules limiting the amount of payment for specific medical services and the feasibility of a peer-review panel of physicians and other health-care providers to review treatment of injured workers in contested cases. If either of these methods, or any other method, appears useful to the committee in limiting cost increases, the committee shall study and recommend specific

methods of implementing those programs by rule of the commission or by legislation, if necessary. The study committee shall be composed of 5 members of the Joint Standing Committee on Labor who shall work with the Workers' Compensation Commission and other interested groups or associations. The study committee may contract with individuals or organizations for research or related work to be done regarding the study.

Sec. 51. Workplace safety study. There is established a Commission on Safety in the Maine Workplace, to consist of knowledgeable citizens who will examine safety attitudes, programs and procedures in Maine's workplaces; and identify initiatives to reduce the frequency, severity and cost of work-related accidents and illnesses; and to promote and improve best-practice safety programs.

The Governor shall appoint the members of the commission, which shall consist of not more than 12 members, including:

1. Three members with expertise and professional qualifications in the field of occupational safety and health;

2. Two members representing workers and 2 members representing private employers, all of whom must be knowledgeable in the area of workplace safety; and

3. Such other members as are deemed by the Governor to be necessary and appropriate to carry out the purposes of this section.

The Governor shall appoint the chairman of the commission and the Commissioner of Labor shall serve as vice-chairman. The commission shall actively seek information and involvement from organized labor, the professional safety community, the various state and federal agencies concerned with safety and interested private citizens, groups and organizations.

The commission shall address the following issues, conduct studies and hold public meetings as necessary to develop findings and recommendations respecting each. The commission shall:

1. Evaluate the effectiveness of current worker safety efforts, practices and programs in the State and the attitudes of employers and workers toward safety;

2. Identify best-practice safety programs in the State and elsewhere whose wide-spread adoption would reduce the incidence, severity and cost of workplace accidents and illnesses;

3. Identify emerging occupational safety and health issues that will be of importance in the future and assess their policy implications; and

4. Determine if existing statistical information on accidents and illnesses is reliable and adequate to monitor trends and to support effective safety rehabilitation and compensation programs.

The commission shall make recommendations on a continuing basis to include:

1. Specific recommendations for action by the Legislature, the Governor, educators, the safety profession, employers and workers which will reduce the frequency, severity and costs of work-related accidents and illnesses and which will enhance, promote and improve safety in Maine's workplaces; and

2. Recommendations for actions that will improve employer, worker and public attitudes toward safety in the workplace and that will create a continuing public-private, employer-employee partnership in the area of job safety.

The Department of Labor shall provide administrative, clerical and technical support to the commission and act as its fiscal agent. All agencies of the State shall cooperate fully with the commission.

Sec. 52. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

	1985-86	1986-87
WORKERS' COMPENSATION COMMISSION		
Positions	(20)	(20)
Personal Services	$319,210	$435,713
All Other	215,860	119,600
Capital Expenditures	235,753	-
Provides funds for the new office of Employment Rehabilitation.		

	1985-86	1986-87
Total	$770,823	$555,313
LEGISLATURE		
All Other Provides funds to study the impact of medical costs on rising workers' compensation expenses.	$15,000	
LABOR, DEPARTMENT OF		
Commission on Safety in the Maine Workplace		
All Other Provides funds to cover the expenses of the Commission on Safety in the Maine Workplace.	$11,000	$11,000
Bureau of Labor Standards		
All Other These funds will cover the start-up costs, necessary to initiate the collection of dedicated revenues. The $5,000 appropriation is to be reimbursed from the dedicated revenues to be collected for the Safety Education and Training Fund.	$ 5,000	
Total	$16,000	$11,000

Sec. 53. Allocation of the Safety Education and Training Fund. Income to the Safety Education and Training Fund for the next 2 fiscal years, from July 1, 1985, to June 30, 1986, and from July 1, 1986, to

June 30, 1987, shall be segregated, apportioned and disbursed as designated in the following schedule.

	1985-86	1986-87
LABOR, DEPARTMENT OF		
Bureau of Labor Standards		
Positions	(3 1/2)	(3 1/2)
Personal Services	$ 71,075	$ 74,628
All Other	100,000	100,000
Capital Expenditures	15,000	15,000
Total	$186,075	$189,628

The above funds shall be used to carry out the safety education and training programs under the Maine Revised Statutes, Title 26, section 42-A.

Sec. 54. Allocation of the Occupational Safety Loan Fund. Income to the Occupational Safety Loan Fund for the next 2 fiscal years, from July 1, 1985, to June 30, 1986, and from July 1, 1986, to June 30, 1987, shall be segregated, apportioned and disbursed as designated in the following schedule.

	1985-86	1986-87
LABOR, DEPARTMENT OF		
Occupational Safety Loan Program		
All Other	$350,000	$350,000
Occupational Safety Loan Program - Administration		
All Other	20,000	20,000

Provides funds to cover the Department of Labor's administrative costs in conjunction with the Occupational Safety Loan Program and to al-

	1985-86	1986-87
low the Department of Labor to contract with the Finance Authority of Maine for the loan application, disbursement and collection process.		
TOTAL	$370,000	$370,000

Sec. 55. Allocation of the Employment Rehabilitation Fund. Income to the Employment Rehabilitation Fund for the next 2 fiscal years, from July 1, 1985 to June 30, 1986, and from July 1, 1986 to June 30, 1987, shall be segregated, apportioned and disbursed as designated in the following schedule.

	1985-86	1986-87
WORKERS' COMPENSATION COMMISSION		
Employment Rehabilitation Program		
All Other	$375,000	$1,130,000
Provides funds for repayment to employees for subsequent injuries to rehabilitated workers, repayment to employers for expenses of unsuccessful rehabilitation and any legal fees incurred by the State under the Maine Revised Statutes, Title 39, section 57-B.		

PART B

Sec. 1. 24-A MRSA c. 25, first 2 lines are repealed and the following enacted in their place:

CHAPTER 25

RATES AND RATING ORGANIZATIONS

SUBCHAPTER I

GENERAL PROVISIONS

Sec. 2. 24-A MRSA §2302, sub-§3, as enacted by PL 1969, c. 132, §1, is repealed and the following enacted in its place:

3. Workers' compensation shall first be subject to chapter 25, subchapter II, but any other parts of this chapter and Title 39 not inconsistent with those sections shall also apply.

Sec. 3. 24-A MRSA §2303, sub-§1, ¶C, as amended by PL 1983, c. 17, is further amended to read:

C. Due consideration shall be given:

(1) To past and prospective loss experience within and outside this State;

(2) To the conflagration and catastrophe hazards;

(3) To a reasonable margin for underwriting profit and contingencies;

(4) To dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers;

(5) To past and prospective expenses both countrywide and those specially applicable to this State;

(6) To all other relevant factors within and outside this State;

(6-A) In the case of workers' compensation rates, consideration shall be given to the information required to be filed under Title 39, section ~~22~~ 22-D, subsections ~~2 and 3~~ 4 and 5; and

(7) 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.

Sec. 4. 24-A MRSA §2303, sub-§1, ¶F, as enacted by PL 1983, c. 551, §1, is repealed.

Sec. 5. 24-A c. 25, sub-c. II is enacted to read:

SUBCHAPTER II

WORKERS' COMPENSATION COMPETITIVE RATING ACT

§2331. Title

This subchapter shall be known and may be cited as the "Workers' Compensation Competitive Rating Act."

§2332. Purposes

The purposes of this Act are:

1. Prohibit price fixing. To prohibit price fixing agreements and other anticompetitive behavior by insurers;

2. Protect policyholders and the public. To protect policyholders and the public against the adverse effects of excessive, inadequate or unfairly discriminatory rates.

3. Promote price competition. To promote price competition among insurers so as to provide rates that are responsive to competitive market conditions;

4. Provide regulatory procedures. To provide regulatory procedures for the maintenance of appropriate data reporting systems;

5. Create improvements. To improve availability, fairness and reliability of insurance; and

6. Authorize cooperative action. To authorize essential cooperative action among insurers in the process of gathering and sharing data and to regulate that activity to prevent practices that tend to substantially lessen competition or create a monopoly.

§2333. Definitions

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

1. Advisory organization. "Advisory organization" means an entity which has 2 or more member insurers or is controlled either directly or indirectly by 2 or more insurers and which assists insurers in rate-making related activities.

A. Two or more insurers having a common ownership or operating in this State under common management or control, constitute a single insurer for the purpose of this definition.

B. Advisory organization does not include a joint underwriting association, an actuarial or legal consultant or an employee of an insurer or insurers under common control or management or their employees or manager.

2. Classification system or classification. "Classification system" or "classification" means the insurance plan, system or arrangement for recognizing differences in exposure to hazards among industries, occupations or operations of insurance policyholders.

3. Competitive market. "Competitive market" means a market which has not been found to be noncompetitive pursuant to section 2335.

4. Expenses. "Expenses" means that portion of a rate attributable to acquisition, field supervision and collection expenses, general expenses, taxes, licenses and fees.

5. Experience rating. "Experience rating" means a rating procedure utilizing past insurance experience of the individual policyholder to forecast future losses by measuring the policyholder's loss experience against the loss experience of policyholders in the same classification to produce a prospective premium credit, debit or unity modification.

6. Loss ratio. "Loss ratio" means the ratio of actual incurred losses during the previous 3-year period to the actual earned premiums during that period.

7. Loss trending. "Loss trending" means a procedure for projecting developed losses to the average date of loss for the period during which the policies are to be effective.

8. Lost-time claim. "Lost-time claim" means a claim for which compensation is paid under Title 39, section 54-A, 55-A, 56, 56-A or 58-A.

9. Market. "Market" means the interaction between buyers and sellers of workers' compensation insurance within this State pursuant to this subchapter. A specific market may be identified by geographic area or schedule or classification system category.

10. Merit rating. "Merit rating" means a rating procedure utilizing the past insurance experience of an individual policyholder with a premium too small to be eligible for experience rating to adjust the policyholder's future premiums to reflect anticipated experience that is better or worse than average.

11. Noncompetitive market. "Noncompetitive market" means a market for which there is a ruling in effect pursuant to section 2335 that a reasonable degree of competition does not exist.

12. Pure premium rate. "Pure premium rate" means that portion of the rate which represents the loss cost per unit of exposure, including lost adjustment expense.

13. Rate. "Rate" means the cost of insurance per exposure base unit, prior to any application of individual risk variations based on loss or expense considerations. Rate does not include minimum premiums.

14. Residual market mechanism. "Residual market mechanism" means an arrangement involving participation by insurers in the equitable apportionment among them of insurance which may be afforded applicants who are unable to obtain insurance through ordinary methods. It includes the Accident Prevention Account and the Safety Pool.

15. Schedule rating. "Schedule rating" means an insurance rating procedure where the premium for an insured may be modified in accordance with rating rules to reflect characteristics of the risk not reflected in its experience.

16. Statistical plan. "Statistical plan" means the plan, system or arrangement used to collect data.

17. Superintendent. "Superintendent" means the Superintendent of Insurance.

18. Supplementary rate information. "Supplementary rate information" means a manual or plan of rates, classification system, rating schedule, minimum premium, policy fee, rating rule, rating plan and any other similar information needed to determine the applicable premium for an insured.

19. Supporting information. "Supporting information" means the experience and judgment of the filer and the experience or data of other insurers or organizations relied on by the filer, the interpretation of any statistical data relied on by the filer, descriptions of methods used in making the rates and any other similar information required to be filed by the superintendent.

§2334. Scope of application

This subchapter applies to workers' compensation insurance and employers' liability insurance written in connection therewith.

§2335. Competitive market

A competitive market is presumed to exist unless the superintendent, after hearing, determines that a reasonable degree of competition does not exist in the market.

1. Order. On that determination, the superintendent shall issue an order to that effect.

2. Time. The order shall specify its expiration date. That date shall be a date deemed reasonable by the superintendent to insure that the market has returned to a reasonable degree of competition.

3. Factors. In determining whether a reasonable degree of competition exists, the superintendent shall consider relevant tests of workable competition pertaining to market structure, market performance and market conduct, including:

A. The extent to which any insurer controls a market;

B. Whether the total number of companies writing insurance is sufficient to provide multiple options to an employer;

C. The disparity among rates and among classifications and subclassifications to the extent that they result in rate differentials;

D. The availability of insurance and the number of insurers and self-insurers actively providing workers' compensation coverage and the level of and changes in market share of insurers and self-insurers;

E. The degree of participation of employers in the residual market mechanism;

F. Whether rate levels in the market are excessive, inadequate or unfairly discriminatory; or

G. The relationship between the premiums charged and the cost of providing coverage, with due consideration of investment income.

4. Basis of order. Any single factor under subsection 3 may be a sufficient basis for determining that a reasonable degree of competition does not exist in a market.

5. Report. The superintendent shall issue a report annually, beginning in 1987, on or before September 1, detailing the state of competition in the market on a statewide basis and identifying specific markets in which competition may not exist or may be threatened. The report shall be based on the criteria of subsection 3, with appropriate weight given to all factors and shall be supported with specific evidence. The report shall be sent to the Governor, the President of the Senate and the Speaker of the House of Representatives.

§2336. Rate standards

The following standards shall be used in determining the reasonableness of rates for insurance under this chapter.

1. General. Rates shall not be excessive, inadequate or unfairly discriminatory.

2. Excessiveness. Standards of excessiveness shall be as follows:

A. Rates in a competitive market are presumed not to be excessive;

B. Rates are excessive if:

(1) The rate is likely to produce a profit or a return on capital and surplus allocable

to risks in this State that is unreasonably high for the insurance provided;

(2) Expenses included in the rate are unreasonably high in relation to services rendered; or

(3) The rate includes excessive subsidization of Safety Pool loss experience.

3. Inadequacy. Rates are inadequate if:

A. They are clearly insufficient to sustain projected losses and expenses; and

B. The use of these rates, if continued, would:

(1) Endanger the solvency of the insurer;

(2) Tend to unreasonably limit competition; or

(3) Tend to create a monopoly in the market.

4. Unfair discrimination. Unfair discrimination exists if, after allowing for practical limitations, rate price differentials fail to reflect equitably the differences in expected losses and expenses. A rate is not unfairly discriminatory because different premiums result for policyholders with like loss exposures but different expenses, or like expenses but different loss exposures, so long as the rate reflects those differences with reasonable accuracy.

§2337. Rating criteria

In determining whether rates comply with the standards of section 2336, the following criteria shall apply.

1. Basic factors in rates. Due consideration may be given to past and prospective loss and expense experience within and outside of this State, to catastrophe hazards and contingencies, to events or trends within and outside of this State, to loadings for leveling premium rates over time for dividends or savings to be allowed or returned by insurers to their policyholders, members or subscribers and to all other relevant factors, including judgment.

2. Expenses. The expense provisions included in the rates to be used by an insurer shall reflect the operating methods of the insurer and, so far as it is credible, its own actual and anticipated expense experience.

3. Profit. The rates may contain provisions for contingencies and an allowance permitting a reasonable profit. In determining the reasonableness of profit, consideration shall be given to all investment income attributable to premiums and the reserves associated with those premiums and to a reasonable return on capital and surplus allocable to the coverage of risks in this State.

§2338. Filing of rates and other rating information

Every insurer shall file with the superintendent all rates and supplementary rate information which are to be used in this State, except that information contained in the uniform plans to which each insurer must adhere under section 2341.

1. Competitive markets. In a competitive market, rates and supplementary rate information shall be filed not later than 5 days after their effective date.

A. If the superintendent finds, after notice and hearing, that an insurer's rates require closer supervision because of the insurer's financial condition or unfairly discriminatory or excessive rating practices, he may require prefiling of rates.

B. If prefiling is required, the insurer shall file with the superintendent at least 30 days before the effective date all such rates and such supplementary rate information and supporting information as prescribed by the superintendent. Upon application by the filer, the superintendent may authorize an earlier effective date.

2. Noncompetitive market. In a noncompetitive market, rates and supplementary rate information shall be filed and shall not take effect until a determination is made by the superintendent. For statewide rates in a noncompetitive market:

A. The filing shall include the information required in a filing under Title 39, section 22-D, subsections 4 and 6, and, to the extent ordered

by the superintendent, the information required in a filing under subsection 5;

B. This Title and Title 39, section 22-D shall apply; and

C. If the State as a market is found to be noncompetitive, the Public Advocate, as appointed under Title 35, section 1-A, may be a party to proceedings under Title 39, section 22-D, relating to rates. A filing requesting that proceeding shall pay a filing fee as provided under section 2350, subsection 3, paragraph B.

3. Filings open to inspection. All rates, supplementary rate information and any supporting information for risks filed under this Act shall, as soon as filed, be open to public inspection at any reasonable time. Copies may be obtained by any person on request and upon payment of a reasonable charge.

§2339. Disapproval of rates

1. Timing. A rate may be disapproved within the following time limits.

A. A rate may be disapproved at any time subsequent to the effective date.

B. A rate subject to prefiling under section 2338 may also be disapproved before the effective date.

C. A rate for a noncompetitive or a residual market shall not become effective until established by the superintendent pursuant to Title 39, section 22-D.

2. Bases of disapproval. The bases for disapproval are as follows.

A. The superintendent shall disapprove a rate if the insurer fails to comply with the filing requirements under section 2338.

B. The superintendent shall disapprove a rate for use in a competitive market if he finds that the rate violates the standards of section 2336 or any other applicable requirement of this Act.

3. Disapproval procedure; order; interim rates. The superintendent may disapprove rates in accordance with the following procedures.

A. The procedure for disapproval shall be as follows.

(1) If the superintendent finds under section 2335 that a reasonable degree of competition does not exist or believes that rates violate the standards of section 2336 or any other applicable requirement of this Act, he may require the insurers to file supporting information in support of existing rates within 30 days or within a reasonable time extension for good cause shown as the superintendent may fix. If, after reviewing the supporting rate information, the superintendent believes that such rates may violate any of the requirements of this Act, he shall call a hearing prior to any disapproval.

(2) The superintendent may disapprove, without hearing, rates prefiled pursuant to section 2338, subsection 1, that have not become effective. The insurer whose rates have been disapproved shall be given a hearing upon a written request made within 30 days after the disapproval order.

B. If the superintendent disapproves a rate, he shall issue an order specifying in what respects it fails to meet the requirements of this subchapter and stating when that rate shall be discontinued for any policy issued or renewed after a date specified in the order. The order shall be issued within 30 days after the close of the hearing or within a reasonable time extension for good cause shown as the superintendent may fix. The order may include a provision for premium adjustment for the period after the effective date of the order for policies in effect on that date.

C. Whenever an insurer has no legally effective rates, the superintendent shall specify interim rates for the insurer that correspond to the rates in effect at that time for the Safety Pool. He may order that a specified portion of the premiums be placed in an escrow account approved by him. When new rates become legally effective, the superintendent shall order the escrowed funds or any overcharge in the interim rates to be distributed appropriately, except that refunds of less than $10 per policyholder shall not be required.

§2340. Monitoring competition and compliance

1. Monitoring competition. The superintendent shall monitor the degree of competition in this State. In doing so, he shall utilize existing relevant information, analytical systems and other sources, cause or participate in the development of new relevant information, analytical systems and other sources or rely on some combination thereof. These activities may be conducted internally within the insurance bureau, in cooperation with other state insurance departments, through outside contractors and in any other appropriate manner.

2. Monitoring rate compliance. The superintendent shall make or cause to be made investigations as he may deem necessary to satisfy himself that rates comply with the requirements of this Act.

§2341. Uniform administration of classifications; reporting of rates and other information

1. Uniform classification system. Every workers' compensation insurer, including self-insurers, shall adhere to a uniform classification system and uniform experience rating plan filed with the superintendent by an advisory organization designated by the superintendent and subject to his disapproval. An insurer may develop subclassifications of the uniform classification system on which a rate may be made, provided that:

A. A subclassification must be filed with the superintendent 30 days prior to its use.

B. The superintendent may disapprove a subclassification if:

(1) The insurer fails to demonstrate that the data produced may be reported consistent with the uniform statistical plan and classification system; or

(2) The proposed subclassification:

(a) Is not reasonably related to the exposure;

(b) Is not adequately defined;

(c) Has not been shown to distinguish among insured based on the potential for or hazard of loss; or

(d) Is likely to be unfairly discriminatory.

2. Statistical advisory organization. The superintendent shall designate an advisory organization to assist him in gathering, compiling and reporting relevant statistical information. Every workers' compensation insurer shall record and report its workers' compensation experience to the designated advisory organization as set forth in the uniform statistical plan.

3. Manual rules. The designated advisory organization shall develop and file manual rules, subject to the approval of the superintendent, reasonably related to the recording and reporting of data pursuant to the uniform statistical plan, uniform experience rating plan and the uniform classification system.

A. Every workers' compensation insurer shall adhere to the approved manual rules and experience rating plan in writing and reporting its business.

B. No insurer may agree with any other insurer or with an advisory organization to adhere to manual rules which are not reasonably related to the recording and reporting of data pursuant to the uniform classification system or the uniform statistical plan.

§2342. Payment of dividends

The following provisions apply to the payment of dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers.

1. Discrimination. The payment shall not unfairly discriminate between policyholders.

2. Rating plan. A plan for payment of dividends, savings or unabsorbed premium deposits is not considered a rating plan or system.

§2343. Uniform experience and merit rating plans

An experience or merit rating plan shall contain reasonable eligibility standards and provide adequate

incentives for loss prevention and for sufficient premium differentials to encourage safety.

1. Experience rating plan. The uniform experience rating plan shall be the exclusive means for providing prospective premium adjustment based upon the past claim experience of an individual insured.

2. Retrospective premium adjustments. Insurers may file rating plans that provide for retrospective premium adjustments based on an insured's past experience.

3. Merit rating plan. If an insured is not eligible for an experience rating plan, a merit rating plan shall be applied.

A. A plan shall provide for the following minimum credits or maximum debits to be applied to the otherwise applicable manual premium, based on the number of lost-time claims of the insured during the most recent 3-year period for which statistics are available:

(1) No claims or a loss ratio of less than 1.0, an 8% credit;

(2) One claim resulting in a loss ratio greater than 1.0, no credit or debit; and

(3) Two or more claims resulting in a loss ratio greater than 1.0, an 8% debit.

B. The insurer shall notify the insured of the premium adjustment, credit or debit and the reason for it.

4. Applicability. No insurer may apply a merit rating plan prior to January 1, 1987.

§2344. Schedule rating

An insurer may file a schedule rating plan which permits modification to the otherwise applicable premium after the application of experience rating but before any premium discounts and loss constants. A plan shall not apply to the residual market.

1. Disapproval. The superintendent may disapprove any schedule rating plan, pursuant to section 2339, if the plan is unfairly discriminatory, if the filer has failed to demonstrate that experience can

be accurately reported, or the plan otherwise fails to comply with the requirements of this section.

2. Standards. The following provisions shall apply to a plan.

A. A modification may not be applied unless supported by evidence contained in the file of the insurer at the time the modification is applied.

B. The effective date of a modification shall not precede the receipt by the insurer of the evidence supporting the modification.

C. An explanation of the modification shall be provided to the insured.

D. The insurer shall provide an opportunity for the insured to correct any information by evidence provided to the insurer.

E. The plan may include the following factors:

(1) Condition of the premises;

(2) Classification peculiarities;

(3) Availability of medical facilities or services;

(4) Presence and use of safety devices;

(5) Methods of employee selection, training and supervision;

(6) Cooperation between management and the insurer on safety and prevention programs;

(7) Compliance with federal, state and local safety and health regulations;

(8) Participation in an organized safety training and education program;

(9) Participation in retraining or rehabilitation programs for injured employees; and

(10) Management organization that encourages safety.

F. Eligibility may not be based on a minimum premium.

3. Applicability; limitations. No insurer may file a schedule rating plan prior to January 1, 1987. In the time period extending from January 1, 1987, to December 31, 1988, no scheduled rating credit may exceed 25% and no debits may be applied. On or after January 1, 1989, no scheduled rating credit or debit may exceed 25%.

§2345. Complaints on rates or filings

Every insurer or advisory organization shall provide within this State reasonable means whereby, on written request, any person aggrieved by the application of its rates or filings may be heard on the manner in which the rating system has been applied.

1. Response time. If the insurer or advisory organization fails to grant or reject the request within 30 days, an applicant may proceed as if the application had been rejected.

2. Appeal. Any party aggrieved by the action of the insurer or advisory organization on that request may, within 30 days after written notice of that action, appeal to the superintendent. After a hearing held on not less than 10 days written notice to the appellant and to the insurer or advisory organization, the superintendent may affirm, modify or reverse that action.

§2346. Licensing advisory organizations

No advisory organization may provide services relating to insurance subject to this subchapter and no insurer may utilize the services of an organization for those purposes, unless the organization has obtained a license under this section.

1. Availability of services. No licensed advisory organization may refuse to supply services for which it is licensed in this State to an insurer authorized to do business in this State and offering to pay the fair and usual compensation for the services.

2. Licensing. In addition to the requirements contained in section 2321, the advisory organization shall include in its application the following:

A. A statement showing its technical qualifications for acting in the capacity for which it seeks a license; and

B. Other relevant information and documents that the superintendent may require.

3. Change of circumstances. An advisory organization which has applied for a license shall notify the superintendent of every material change in the facts or documents on which its application was based. An amendment to a document shall be filed at least 30 days before it becomes effective.

4. Granting of license. If the superintendent finds that the applicant and the natural persons through whom it acts are competent, trustworthy and technically qualified to provide the services proposed and that all requirements are met, he shall issue a license specifying the authorized activity of the applicant. He shall not issue a license if the proposed activity tends to create a monopoly or to substantially lessen competition in the market.

5. Duration. Licenses shall remain in effect until the licensee withdraws from the State or until the license is suspended or revoked.

6. Suspension or revocation. The license of an advisory organization which does not comply with the requirements and standards of this chapter may be suspended or revoked by the Administrative Court.

§2347. Insurers and advisory organizations; prohibited activity

1. Restraint of trade. No insurer or advisory organization may make any arrangement with any other insurer, advisory organization or other person which has the purpose or effect of unreasonably restraining trade or substantially lessening competition in the business of insurance.

2. Rate agreements. No insurer may agree with any other insurer or with an advisory organization to adhere to or use a rate or rating plan, other than a uniform experience or classification rating plan or rating rule, except as needed to comply with the requirements of section 2341.

3. Proof of agreement. The fact that 2 or more insurers, whether or not members or subscribers of an advisory organization, use the same rule, rating plan, rating schedule, rating rule, policy form, rate classification, underwriting rule, survey or inspection or similar material is not sufficient in itself to support a finding that an agreement exists.

4. Common ownership. Two or more insurers having a common ownership or operating in this State under common management or control may act as if they constituted a single insurer.

5. Advisory organizations. Except as specifically permitted under section 2348, no advisory organization may:

A. Compile or distribute recommendations relating to rates that include:

(1) Expenses, other than loss adjustment expenses;

(2) Profit; or

(3) Actuarial projections or trending factors;

B. File rates, supplementary rate information or supporting information on behalf of an insurer; or

C. Engage in any activity which is prohibited by chapter 23.

§2348. Advisory organizations; permitted activity

Any advisory organization, in addition to other activities not prohibited, may:

1. Develop statistical plans. Develop statistical plans, including class definitions;

2. Collect data. Collect statistical data from members, subscribers or any other source;

3. Prepare pure premiums. Prepare and distribute pure premium rate data in accordance with its statistical plans. The data shall be in sufficient detail to permit insurers to modify the pure premiums based on their own rating methods or interpretations of underlying data. Appropriate actuarial projection and trending factor data may be prepared and submitted to the superintendent to the extent necessary to establish proper residual market rates;

4. Prepare rating rules. Prepare and distribute manuals of rating rules and rating schedules that do not contain any rules or schedules containing final rates or permitting calculation of final rates without information outside the manuals;

5. Distribute information. Distribute information that is filed with the superintendent and open to public inspection;

6. Conduct research. Conduct research and collect statistics in order to discover, identify and classify information relating to causes or preventions of losses;

7. File policy forms. Prepare and file policy forms and endorsements and consult with members, subscribers and others relative to their use and application;

8. Distribute pricing information. Collect, compile and distribute past and current prices of individual insurers if the information is made available to the general public;

9. Evaluate benefit changes. Conduct research and collect information to determine the impact of benefit level changes on pure premium rates; and

10. Calculate experience rating modifications. Prepare and distribute rules and rating values for the uniform experience rating plan; calculate and disseminate individual values for the uniform experience rating plan; and calculate and disseminate individual risk premium modifications.

§2349. Advisory organizations; filing requirements

An advisory organization shall file with the superintendent every pure premium rate, manual of rating rules, rating schedule and change, amendment or modification of them, proposed for use in this State, not more than 5 days after it is distributed to members, subscribers or others.

§2350. Residual market mechanism

The residual market mechanism shall be composed of an Accident Prevention Account and a Safety Pool.

1. Accident Prevention Account. The Accident Prevention Account shall be an insurance plan that provides for the equitable apportionment among insurers of insurance which may be afforded applicants who are in good faith entitled to but unable to procure that insurance through ordinary methods because of their demonstrated accident frequency problem, measurably adverse loss ratio over a period of years,

or demonstrated attitude of noncompliance with safety requirements.

A. All insurers authorized to write workers' compensation and employers' liability insurance in this State shall participate in the plan.

B. The plan shall include an experience rating system and merit rating plan whereby the premium of each employer in the account is modified either prospectively or retrospectively. An experience modification shall only be applied to the manual rate of the plan. The plan shall also provide for premium surcharges for employers based on their specific loss experience within a specified period or other factors which are reasonably related to their risk of loss. The sensitivity of a rating system may vary by size of the risk involved.

C. The plan shall produce the least possible subsidization of the account's loss experience consistent with this chapter and sound actuarial principles. Subsidization shall be borne equally by the voluntary market and the Safety Pool based on premium amounts.

D. Commissions under a plan shall be established at a level that is neither an incentive nor a disincentive to place an employer in the account.

E. An employer is eligible for insurance from the Accident Prevention Account if:

(1) He has a loss ratio greater than 1.00 over the last 3 years for which data is available; and

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

F. A designated advisory organization shall submit a plan for the superintendent's approval within 30 days of the effective date of this section. A plan or amendment shall not take effect until approved by the superintendent.

(1) The following applies to premium surcharges.

(a) No premium surcharges may be applied until on or after January 1, 1987.

(b) Premium surcharges apply to a premium that is experience or merit rating modified.

(c) Premium surcharges may not exceed 10% prior to January 1, 1989.

(d) Premium surcharges shall be based on an insured's adverse deviation from expected incurred losses in this State. The surcharge shall be based on the ratio of "A" to "B" where:

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

(ii) "B" is the expected incurred losses of a risk during that period as calculated under the uniform experience or merit rating plan times the risk's current experience or merit rating modification factor.

(e) The premium surcharge shall be as follows:

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

G. The Accident Prevention Account shall be subject to Title 39, section 22-D, and shall be considered to be an insurer under this subchapter.

2. Safety Pool. The Safety Pool is an insurance plan that provides for an alternative source of insurance for employers with good safety records.

A. The Safety Pool is created. It is intended to operate within the framework of the voluntary insurance market.

(1) The Safety Pool is not a state fund and the State shall have no proprietary interest in the Safety Pool or contributions made to it.

(2) The Safety Pool shall be exempt from any budgetary control or supervision by state agencies, except to the extent an insurance company is so supervised or controlled.

B. An employer shall be eligible for the Safety Pool if he:

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

(2) Has a loss ratio which does not exceed 1.0 over the last 3 years for which data is available; or

(3) Has been in business for less than 3 years, provided that his eligibility shall terminate if his loss ratio exceeds 1.0 at the end of any year.

C. A member of the Safety Pool who becomes ineligible under paragraph B shall be ordered to leave the Safety Pool after notice under Title 39, section 23, subsection 1.

D. The Safety Pool shall be subject to Title 39, section 22-D, and shall be considered to be an insurer under this chapter.

(1) There should be no subsidization of the Safety Pool's loss experience by employers not in the Safety Pool.

(2) The superintendent shall annually review the rates in the Safety Pool to determine if subsidization exists.

E. Every insurance company which is a participant in the Accident Prevention Account shall also be a participant in the Safety Pool.

F. The superintendent, after notice and hearing, shall adopt and may amend a plan for the operation of the Safety Pool.

(1) An advisory organization designated by the superintendent shall submit a plan, including rates, supplementary rate information and policy forms, for the superintendent's approval within 30 days of the effective date of this section.

(2) The superintendent may require additional information he deems necessary to properly evaluate the plan.

(3) Commissions under a plan shall be established at a level that is neither an incentive nor a disincentive to place an employer in the Safety Pool.

(4) A plan, or any amendment to it, shall not take effect until approved by the superintendent.

G. The superintendent shall annually issue a report, beginning in 1987, on or before September 1st, to the Governor, the President of the Senate and the Speaker of the House of Representatives. The report shall include at least the following information relating to the Safety Pool:

(1) The percentage of total insured premium in this State written in the Safety Pool;

(2) The percentage of all insured employers in this State written in the Safety Pool;

(3) The number of employers in the Safety Pool and the number who have entered or left;

(4) The total earned premium, paid losses, reserves and incurred losses; and

(5) The investment income of the Safety Pool and its method of allocation or determination.

3. Rate filings. Rate filings for rates in the Accident Prevention Account and the Safety Pool shall be made at the same time or not sooner than 180 days apart. If filed together, they shall be considered together.

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

B. The Public Advocate, as appointed under Title 35, section 1-A, shall be a party to proceedings under Title 39, section 22-D, relating to rates for the Accident Prevention Account or Safety Pool.

C. A filer requesting a proceeding under Title 39, section 22-D, relating to rates for the Accident Prevention Account or Safety Pool, shall pay to the superintendent at the time of the filing a filing fee, which shall be immediately credited to the Public Advocate. The fee shall be segregated and expended for the purpose of employing outside consultants to fulfill the requirements of paragraph B and any portion not so expended shall be returned to the filer. For a filing filed in 1985, 1986 or 1987, the fee shall be $75,000; in 1988, $65,000; and in 1989 or thereafter, $50,000. If filings in the Accident Prevention Account and the Safety Pool are made together, only one fee shall be paid, which shall be evenly divided between the 2 filers.

D. The designated advisory organization may make and file the plan of operation, rates, rating plans, rules and policy forms for the Accident Prevention Account or Safety Pool, or both.

4. Review. The superintendent shall review the rates, 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 he believes it necessary.

5. Rates. The insurance rates for the Accident Prevention Account and the Safety Pool shall be governed by section 2355.

§2351. Safety groups

A safety group shall be an insured plan that provides for an alternative source of insurance for members of an organization or association. An insurer may issue a workers' compensation and employers' liability policy or policies insuring a safety group if the requirements of this section are met.

1. Filings. The organization or association shall file with the superintendent:

A. A copy of its articles of incorporation and bylaws or its agreement of association and rules governing the conduct of its business, all certified by the custodian of the originals;

B. An agreement that only members of the organization or association shall be eligible for insurance as a member of the group and that it will notify its insurer within 10 days if any member fails to remain a member in good standing in accordance with the standards and rules of the organization or association;

C. A description of the operation and makeup of a safety committee which, by means of education and otherwise, will seek to reduce the incidence and severity of accidents or claims; and

D. If a group policy, an agreement in writing duly executed guaranteeing that, if the insurer notifies the safety group of the nonpayment of a premium by an insured member within 60 days after the premium was due, the safety group will pay to the insurer the amount of any past due premium which does not exceed the amount of the dividends that are due the safety group or its members from the insurer. The safety group shall promptly notify the insurer of the known insolvency of any member of the group and shall request, upon learning of the insolvency, the removal of the member from the group. A copy of the resolution of the governing board of the group authorizing the execution of the guarantee agreement shall be filed with the superintendent and with the insurer issuing the group policy.

2. Advance premium discounts. Any advance premium discount for any new or existing safety group shall be filed with the superintendent not later than 5 days after the effective date.

3. Management. The safety group shall designate a person to act as the manager or authorized representative of the group. The manager or the group may be remunerated by the members for expenses, including all ordinary operating expenses of the group, but in no instance shall the amount charged to members exceed 10% of earned premiums.

4. Dividends. Dividends or returned premiums paid or credited to a safety group shall be paid or credited to the individual members of the group, except that the indebtedness for any unpaid premium shall be first deducted from any dividend or premium returned.

5. Other requirements. Any safety group formed or operating under this section shall be subject to the requirements of sections 2931 to 2940, except that the safety group or the insurer may establish reasonable underwriting standards regarding eligibility for acceptance and continued membership of the safety group. These underwriting standards shall be filed with the superintendent and may be disapproved by the superintendent if they unreasonably limit membership in the safety group.

§2352. Examinations

1. Examination. The superintendent may examine an insurer or advisory organization as he deems necessary to ascertain compliance with this subchapter.

2. Records. Every insurer and advisory organization shall maintain reasonable records of the type and kind reasonably adapted to its method of operation, containing its experience or the experiences of its members, including the data, statistics or information collected or used by it in its activities.

A. These records shall be available at all reasonable times.

B. These records shall be maintained in an office within this State or shall be made available to the superintendent at his office on reasonable notice.

3. Cost. The reasonable costs of an examination shall be paid by the examined party on presentation of a detailed account of these costs.

4. Report. In lieu of an examination, the superintendent may accept the report of an examination

by the insurance supervisory official of another state, made pursuant to the laws of that state.

§2353. Penalties

1. Civil penalties. A person or organization in violation of a provision of this chapter shall be assessed a civil penalty of not more than $1,000 for each violation, except that where a violation is willful, a civil penalty of not more than $10,000 shall be assessed for each violation. These penalties may be in addition to any other penalty provided by law.

2. Separate violation. For purposes of this section, an insurer using a rate for which that insurer has failed to file the rate, supplementary rate information or supporting information as required by this subchapter, shall have committed a separate violation for each day that failure continues.

3. License. The license of an advisory organization or insurer which fails to comply with an order of the superintendent may be suspended or revoked by the Administrative Court.

§2354. Judicial review

An order, rule or decision of the superintendent made after a hearing is subject to judicial review in accordance with section 236.

§2355. Rate change limitations

The following provisions shall apply to all workers' compensation insurance rates under this subchapter and Title 39, sections 22-C and 22-D.

1. Purpose. The provisions of this section reflect the rate effect of amendments to Title 39 implemented by Public Law 1983, chapter 479 and by this Act and the consideration of investment income attributable to insurance premiums and reserves which income has not previously been considered in establishing present rates.

2. Rate reduction. A rate filing shall not be effective after the effective date of this section unless the overall manual rate level is reduced at least 8% from the overall manual rate level in effect on January 1, 1985. If no rate filing is effective after the effective date of this section, the superintendent shall immediately promulgate rates, to

be effective on August 1, 1985, whose overall manual rate level is reduced at least 8% from the overall manual rate level effective on January 1, 1985. The superintendent's determination without a filing shall require notice and hearing as provided under Title 5, chapter 375, subchapter IV; and the notice and hearing provisions of this Title and Title 39, sections 22-C and 22-D shall not apply.

A. "Overall manual rate level" means the projected total amount of money to be generated by the application of manual rates per $100 of payroll on file with the superintendent, exclusive of any rating system adjustments, including minimum premiums, loss constants, experience or retrospective rating plans or dividend plans.

B. An insurer may not use a rate for workers' compensation insurance higher than this rate.

3. Rates during 1985 and 1986. From July 1, 1985, to December 31, 1986, each insurer's rates shall not exceed the workers' compensation rates in effect on June 30, 1985, except that this rate shall be adjusted under subsection 2.

4. Rates during 1987. From January 1, 1987, to December 31, 1987, each insurer's rates shall not exceed the workers' compensation rates in effect on December 31, 1986, increased by no more than 10%.

5. Rates during 1988. From January 1, 1988, to December 31, 1988, each insurer's rates shall not exceed the workers' compensation rates allowed under subsection 4, increased by no more than 10%.

6. Application. The rate limitations in this section shall apply to all workers' compensation insurance written in this State and to rates in the competitive and residual markets. For policies in effect on the effective date of this section, the premiums due or paid shall be reduced on a pro rata basis for the remainder of the term of that policy after August 1, 1985, to reflect the reduction under subsection 2.

7. Report. The superindentent shall issue a report on or before May 1, 1987, detailing the realized savings or reduced expenses which have resulted from the amendments to Title 39 implemented by Public Law 1983, chapter 479 and this Act, including a specific allocation of those savings or reduced expenses to the specific changes in law. The report shall be

based on reported data from insurers for calendar years 1984, 1985 and 1986 and information derived from one or more public hearings. Its conclusions shall be supported with specific evidence. It shall also include recommendations to implement any adjustments to the estimated savings reflected in the reduction of subsection 2 for actual experience. The report shall be sent to the Governor, the President of the Senate and the Speaker of the House.

§2356. Costs

In any proceeding under section 2335 or 2338, the superintendent may employ staff personnel and outside consultants. The reasonable costs related to the conduct of the proceeding, including conduct of any hearings, shall be borne by the insurer involved in the proceeding.

§2357. Nonseverability

In the event that any portion of this subchapter, except section 2355, is held invalid, it is the intent of the Legislature that this entire subchapter, except section 2355 and this section, is invalidated and the provisions of Title 39, section 22-C, subsection 13 and section 22-D are also invalidated. In the event that section 2355 is held invalid, it is the intent of the Legislature that this entire subchapter and the provisions of Title 39, section 22-C, subsection 13; sections 22-D, 53-A, 54-A, 55-A, 58-A and 62-B; section 94-A, subsection 3; section 110, subsection 2; and section 112-A are also invalidated, provided that the effective date of the invalidation of sections 53-A, 54-A, 55-A, 58-A and 62-B; section 94-A, subsection 3; section 110, subsection 2; and section 112-A shall be 60 days after the date of a court decision effectively invalidating section 2355 if the Legislature is in regular session on the date of that court decision, or, if the Legislature is not in regular session on that date, 60 days after the date of the convening of the next regular session.

Sec. 6. 39 MRSA §22-B, as amended by PL 1983, c. 659, §§1 and 2, is repealed.

Sec. 7. 39 MRSA §22-C, sub-§13 is enacted to read:

13. Application. This section does not apply to rate filings governed by section 22-D and Title 24-A,

chapter 25, subchapter II. This section is repealed on January 1, 1989.

Sec. 8. 39 MRSA §22-D is enacted to read:

§22-D. Approval of insurance policies and rates

The following provisions apply to determination of insurance policies and rates by the Superintendent of Insurance as provided in Title 24-A, chapter 25, subchapter II.

1. Policies. Every insurance company issuing workers' compensation insurance policies covering the payment of compensation and benefits provided for in this Act shall file with the Superintendent of Insurance:

A. A copy of the form of the policies. A policy may not be issued until the superintendent has approved the form;

B. Its classification of risks and their premium rates and any subsequent proposed classifications and premium rates; and

C. Any premium rates less than those approved which may be used.

Premium rates for insurance issued in the residual market shall not take effect until established by the superintendent. All other premium rates shall take effect as provided in Title 24-A, chapter 25, subchapter II.

2. Determination of rates. The superintendent shall apply the procedures and standards of this section in investigating, reviewing and determining just and reasonable rates.

A. He may require the filing of specific rates for workers' compensation insurance, including classifications of risks, experience or any other rating information from insurance companies authorized to transact insurance in this State.

B. He may make or cause to be made investigations as he deems necessary to satisfy himself that the rates to be promulgated are just and reasonable.

C. He may at any time, after public hearing, withdraw his approval of a previously approved rate filing.

3. Notice of filing. At least 45 days prior to any filing for rates under this section, a filer shall notify the superintendent in writing of its intention to file and shall disclose the approximate amount of a requested increase or decrease and a description of major rating rule changes to be proposed. Within 10 days of receipt, the superintendent shall notify the public by publication in the state paper and notify the Public Advocate that a rate filing is to be made.

4. Contents of filing. A rate filing shall include, for each company included in the filing:

A. For each of the 3 calendar years immediately preceding the date of the filing:

(1) The actual gross earned premium allocable to the coverage of risks in this State;

(2) For unearned premium, earned premium, loss and loss expense reserve funds and capital and surplus subject to investment, allocable to the coverage of risks in this State:

(a) The amount of investments of each type of funds;

(b) The types of investments of all these funds; and

(c) The annual income amounts, before taxes, generated by the aggregate of these investments;

(3) The gross rate of return on admitted assets;

(4) The amount of dividends or the equivalent allowed or returned to policyholders, members or subscribers;

(5) The aggregate annual expenses allocable to the coverage of risks in this State, including acquisition and field supervision expenses, taxes, licenses and fees, other than federal income tax and general ex-

penses, each stated separately. Safety engineering expense and loss control services' expense shall be stated separately under general expense;

(6) The aggregate annual losses and loss adjustment expenses allocable to the coverage of risks in this State;

(7) The total loss reserves for this coverage being held at the beginning and end of each calendar year and the annual paid losses, including methods and interest rates used in determining present value for the reserves to which they apply; and

(8) The changes and improvements instituted in loss control and employee safety engineering;

B. For each risk classification:

(1) The rate presently applicable to the classification;

(2) The rate proposed for the classification;

(3) Loss experience in this State for each of the 3 most recent years available, including, in each classification, payroll, number of serious workers' compensation cases, number of nonserious cases, the losses, including medical expenses incurred with respect to each type of case, loss adjustment expense and the total of all losses and expenses incurred; and

(4) The information required by this paragraph shall be presented in tabular form;

C. If data reported is determined by percentage factors, rather than actual expense, an explanation of the basis of the factors used;

D. Statements or exhibits that reasonably substantiate assumptions, methodology or calculations used in support of the proposed rates or to generate the information or data in the filing and identification of any of those that are known or believed to be contrary to established policy of the superintendent; and

E. Any other information required to be included by the superintendent.

5. Aggregate data. Aggregate expense data, annual losses, loss adjustment expense data and loss experience data required to be reported under subsection 4, paragraph A, subparagraphs (5) and (6); and paragraph B, subparagraph (3), shall be based on expense and experience data pertaining to this State, except as otherwise provided in this subsection. The rate of return on capital and surplus used in establishing the rates requested, the rate of return on the investment allocable to the coverage of risks in this State and the facts, assumptions and calculations employed to derive each rate of return shall also be reported in the aggregate.

A. To the extent that the Maine expense and experience data is not fully creditable, the superintendent may allow reporting of and consider data from outside this State.

B. Aggregate loss experience data shall:

(1) Include and be categorized as required in subsection 4, paragraph B, subparagraph (3); and

(2) Be presented in tabular form. The tables shall indicate, with respect to each classification, the relative weight given to experience in this State and to national experience in determining the applicable rate.

6. Additional information. The superintendent may require, at any time, any additional information he deems necessary and may reasonably extend the time periods established in subsection 9 to allow time to provide that information.

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

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

(2) An applicant shall complete or amend the filing within 30 days of that written notice.

(3) An action or inaction by the superintendent under this paragraph does not constitute a substantive finding that the information in the filing is 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.

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

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

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

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

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

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

(3) Based on reported loss reserves, including the discount rates applied to those reserves, that do not result in rates that are excessive, inadequate or unfairly discriminatory.

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

(1) 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;

(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 companies to the annual operating expenses reported in the filing and the annual insurance expense exhibits filed by each company with the bureau; and

(8) The operating and management efficiency of the companies.

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

D. The filer shall have the burden of proving that the rates meet the requirements of this section and Title 24-A, chapters 23 and 25.

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

F. For the introduction of a new rate for a new classification or the adjustment of a single rate for an existing classification, the requirements of paragraph A, subparagraph (1); subsection 2; subsection 4, paragraphs B to E; and subsections 8, 9, 10, 12 and 13 shall apply. The superintendent shall establish the new rate at a level which is not unfairly discriminatory in relation to the

currently approved rates for other classifications.

8. Public record. A rate filing shall be a public record and shall be available for public review and inspection.

9. Information for parties and intervenors. A party or intervenor may make written application to the superintendent for an order that a filer produce any information relevant to whether the filing rates meet the requirements of this section and Title 24-A, except for information relating to a particular claim. If the filer fails to furnish the information within the time prescribed by the superintendent, the party or intervenor making the request may make written application to the superintendent for an order dismissing the filing. If, after a hearing, the superintendent determines that the failure to furnish the information was without good cause, he shall issue an order for dismissal of the filing.

10. Public hearing. The superintendent shall hold a public hearing, as provided in Title 24-A, sections 229 and 235, on each filing. The public hearing shall be conducted no sooner than 30 days and no later than 120 days of the date the rate filing is deemed complete by the superintendent, unless the superintendent extends these limits under subsection 6. The superintendent shall establish just and reasonable rates and state his findings in a written order issued within 180 days from the date the filing is completed, unless he extends this limit under subsection 6. If the superintendent denies or dismisses a filing, any further filing shall be deemed to be a new filing, subject to this public hearing requirement.

11. Subsequent filing. A filer may not file a rate filing within 180 days of receiving a rate increase or decrease.

12. Procedure; rules. Subject to the applicable requirements of the Maine Administrative Procedure Act, Title 5, chapter 375, the superintendent may adopt rules establishing procedures for the administration of this section, including, but not limited to, procedures governing submission of petitions for intervenor status, prefiling of testimony and exhibits, information requests, subpoenas, prehearing conferences and conduct of hearings.

13. Costs. For the purpose of determining whether a filing meets the requirements of this section, the superintendent may employ staff personnel and outside consultants. The reasonable costs related to the review of workers' compensation rate filings, including conduct of the hearing, shall be borne by the advisory organization or insurer making the filing.

14. Application. This section applies as provided in Title 24-A, chapter 25, subchapter II.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect as follows:

Part A - Sections 3, 5 to 9, 15 to 21, 24 to 27, 30, 32, 34, 40, 41 and 43 to 54 shall take effect on June 30, 1985, and shall apply only as to injuries occuring on and after that date. The remainder of Part A shall take effect on January 1, 1986, and shall apply only as to injuries occuring on and after January 1, 1986.

Part B - The following sections within Part B, section 5 shall take effect on July 1, 1985: Sections 2341 and 2346; section 2348, subsections 1, 4, 5 and 10; section 2350, subsection 1, paragraph E and subsection 2, paragraph F; and section 2355. Part B, section 6 shall take effect on January 1, 1987, and the remainder of Part B shall take effect on January 1, 1986.

Effective June 18, 1985, unless otherwise indicated.

CHAPTER 373

S.P. 501 - L.D. 1362

AN ACT to Establish the State Employee Assistance Program.

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

Sec. 1. 22 MRSA c. 254-A is enacted to read:

CHAPTER 254-A

STATE EMPLOYEE ASSISTANCE PROGRAM

§1391. Legislative Intent