

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from electronic originals  
(may include minor formatting differences from printed original)

**LAWS**  
**OF THE**  
**STATE OF MAINE**

**AS PASSED BY THE**  
**ONE HUNDRED AND SEVENTEENTH LEGISLATURE**

**FIRST REGULAR SESSION**  
**December 7, 1994 to June 30, 1995**

**THE GENERAL EFFECTIVE DATE FOR**  
**FIRST REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**SEPTEMBER 29, 1995**

**PUBLISHED BY THE REVISOR OF STATUTES**  
**IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,**  
**TITLE 3, SECTION 163-A, SUBSECTION 4**

---

---

**J.S. McCarthy Company**  
**Augusta, Maine**  
**1995**

**5. Criminal prosecution.** A criminal prosecution under Title 17-A, chapter 15 is not a prerequisite to an action under this chapter and such a criminal prosecution does not bar civil action. An action under this chapter does not bar a criminal prosecution under Title 17-A, chapter 15.

**6. Failure to prosecute.** If a merchant files suit to recover damages and penalties pursuant to this chapter, and the merchant fails to appear at a hearing in such proceedings without excuse from the court, the court shall dismiss the suit without prejudice and award costs to the defendant.

**7. Fraudulent prosecution.** Any person who knowingly uses provisions of this chapter to demand or extract money from a person who is not legally obligated to pay a penalty may be punished by a fine of not more than \$1,000 or by imprisonment for not more than one year or by both.

See title page for effective date.

---



---

## CHAPTER 289

S.P. 594 - L.D. 1578

### An Act to Create the Workers' Compensation Residual Market Deficit Resolution and Recovery Act

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

**Whereas,** by October 1987, virtually all insurers filed and had approved applications to withdraw from the Maine workers' compensation market, and the market faced complete collapse; and

**Whereas,** the Legislature convened a special session in October 1987, which ultimately resulted in the enactment of emergency legislation that overhauled the Maine workers' compensation system and included the so-called "Fresh Start" law, the Maine Revised Statutes, Title 24-A, sections 2386 and 2386-A and their predecessor statutes, sections 2366 and 2367. In response to the enactment of the Fresh Start law a core group of major insurers had formally rescinded their withdrawals from the Maine workers' compensation market; and

**Whereas,** due to various forces beyond the Legislature's control, the Fresh Start law did not resolve many of the major problems at which the statute was aimed; and

**Whereas,** the Legislature created the Maine Employers Mutual Insurance Company, or "MEMIC," to oversee and operate the workers' compensation

residual market in the State as of January 1, 1993, and workers' compensation rates in this State have decreased in each of the last 2 years, largely due to MEMIC's effectiveness; and

**Whereas,** the "Fresh Start" statute requires the Superintendent of Insurance to adopt rules establishing a plan of operation for the residual market mechanism to govern the operation of the State's workers' compensation insurance residual market; and

**Whereas,** the Superintendent of Insurance in bureau rules promulgated the "Plan of Operation for the Workers' Compensation Residual Market Mechanism," pursuant to which a residual market pool was created to collect funds and pay obligations of the residual market mechanism; and

**Whereas,** the residual market mechanism wrote workers' compensation insurance policies through participating insurers during the period January 1, 1988 to December 31, 1992, ceased writing new business as of December 31, 1992, and now conducts only operations limited to running off business written during that period; and

**Whereas,** the workers' compensation residual market in the State has generated substantial funding deficits and is projected to experience cash inadequacies that could render the residual market pool incapable of satisfying its obligations as they become due; and

**Whereas,** disputes concerning the operation of the residual market mechanism and the funding of residual market pool deficits have resulted in extensive and protracted litigation involving the Bureau of Insurance, employer representative groups, the Board of Governors of the residual market pool and many significant workers' compensation insurers in the State; and

**Whereas,** the current and continued operation of the residual market mechanism under existing law will hamper economic growth and development in the State by placing a substantial and undue financial burden on Maine employers, the residual market pool, the Bureau of Insurance and the former and current workers' compensation insurers, thereby fostering and perpetuating litigation and attendant uncertainty within the State; and

**Whereas,** a new funding scheme is necessary to enable the residual market pool to satisfy outstanding, ongoing and future obligations and to remove the financial burden and uncertainty attributable to the current and continued operation of the residual market mechanism; and

**Whereas**, the residual market mechanism must be modified in certain respects to provide for more efficient and cost-effective operations; and

**Whereas**, under certain circumstances it may be appropriate and beneficial that the workers' compensation residual market mechanism receive assistance in borrowing to meet its obligations; 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:**

**Sec. 1. 10 MRSA §963-A, sub-§10, ¶N**, as amended by PL 1995, c. 4, §1, is further amended to read:

N. Any electric rate stabilization project; ~~or~~

**Sec. 2. 10 MRSA §963-A, sub-§10, ¶O**, as enacted by PL 1995, c. 4, §1, is amended to read:

O. Any major business expansion project; or

**Sec. 3. 10 MRSA §963-A, sub-§10, ¶P** is enacted to read:

P. Any workers' compensation residual market mechanism project.

**Sec. 4. 10 MRSA §963-A, sub-§52-A** is enacted to read:

**52-A. Workers' compensation residual market mechanism project.** "Workers' compensation residual market mechanism project" means a loan or loans requested by the Board of Governors of the Maine Workers' Compensation Residual Market Pool pursuant to Title 24-A, section 2395, subsection 5.

**Sec. 5. 10 MRSA §1041, sub-§19** is enacted to read:

**19. Workers' compensation residual market mechanism projects.** Provide loans for workers' compensation residual market mechanism projects, if the authority determines that the financing requested by the workers' compensation residual market pool is a reasonable and prudent extension of credit. Revenue obligation securities secured by capital reserve funds pursuant to section 1053 relating to any loan authorized by this section are limited obligations of the authority payable from revenues from the workers' compensation residual market pool and any capital reserve funds pledged for those securities and are not

payable from any other assets or funds of the authority.

**Sec. 6. 10 MRSA §1053, sub-§6**, as amended by PL 1995, c. 120, §1, is repealed and the following enacted in its place:

**6. Securities outstanding.** The authority may not have at any one time outstanding revenue obligation securities to which subsection 5 is stated in the trust agreement or other document to apply in principal amount exceeding an amount equal to \$150,000,000 less the aggregate outstanding balance of mortgage loans secured by capital reserve funds pursuant to section 1032. Notwithstanding any other provision of this subsection, the authority may additionally have outstanding at any one time:

A. Bonds under this subchapter relating to loans for electric rate stabilization projects, in the amount of \$264,000,000 consisting of not more than \$220,000,000 for loans and up to \$44,000,000 for use of bond proceeds to fund capital reserve funds;

B. Bonds under this subchapter relating to loans for major business expansion projects, in the amount of \$120,000,000 consisting of not more than \$100,000,000 for loans and up to \$20,000,000 for use of bond proceeds to fund capital reserve funds; and

C. Bonds under this subchapter relating to workers' compensation residual market mechanism projects, in the amount of \$57,000,000 consisting of not more than \$45,000,000 for loans and up to \$12,000,000 for use of bond proceeds to fund capital reserve funds.

The amount of revenue obligation securities issued to refund securities previously issued may not be taken into account in determining the principal amount of securities outstanding, provided that proceeds of the refunding securities are applied as promptly as possible to the refunding of the previously issued securities. In computing the total amount of revenue obligation securities of the authority that may at any time be outstanding for any purpose, the amounts of the outstanding revenue obligation securities that have been issued as capital appreciation bonds or as similar instruments are valued as of any date of calculation at their then current accreted value rather than their face value.

**Sec. 7. 24-A MRSA §2386, sub-§2**, as enacted by PL 1991, c. 885, Pt. B, §12 and affected by §13, is repealed.

**Sec. 8. 24-A MRSA §2386, sub-§5**, as amended by PL 1993, c. 364, §1, is further amended to read:

**5. Plan of operation.** The superintendent shall adopt rules pursuant to Title 5, chapter 375, subchapter II, establishing a plan of operation for the residual market mechanism. ~~The plan of operation must contain those terms that the superintendent in the superintendent's discretion determines necessary.~~

A. The plan must include an experience rating system and merit rating plan providing that the premium of each employer in the account is modified either prospectively or retrospectively. An experience modification may only be applied to the manual rate of the plan. The sensitivity of a rating system may vary by size of the risk involved.

B. The plan must include a procedure to handle appeals filed pursuant to former Title 39, section 106, subsection 2, paragraph B.

C. The plan must provide for premium surcharges for employers in the Accident Prevention Account based on their specific loss experience within a specified period or other factors that are reasonably related to their risk of loss.

(1) No premium surcharge may be applied to a risk whose threshold loss ratio is less than 1.0. The threshold loss ratio is based on the ratio of "L" to "P" where:

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

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

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

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

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

(b) "B" is the expected incurred losses of a risk during that period as calculated under the uniform experience or merit rating plan multiplied by

the risk's current experience or merit rating modification factor.

(4) The premium surcharge is 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%

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

E. In addition to factors in paragraphs A to C, any servicing contract must be approved on the basis of acceptable price and performance.

F. If after notice and hearing the superintendent determines that insurers are unwilling to provide services that are reasonably necessary for the operation of the plan, the superintendent may award service contracts within various areas of the State on the basis of acceptable price and performance. If the superintendent chooses to award such contracts, the specifications must give special consideration to loss control, safety engineering and any other factor that affects safety.

G. Beginning July 1, 1993, the plan must provide for a board of governors, which shall control the affairs and business of the residual market mechanism. The board of governors must be composed of 9 members, 5 of whom represent the business community of the State and 4 of whom represent insurers that are members of the residual market mechanism. The superintendent shall adopt rules to carry out the purposes of this paragraph.

(1) The representatives of insurers on the board of governors are elected by the membership at the annual meeting of the residual market mechanism for staggered terms of 3 years, with the first appointments of one member for one year, one member for 2 years and 2 members for 3 years. An insurer or a group of insurers under common ownership, management or control may not be represented by more than one person on the board of governors.

~~(2) The business community members of the board of governors are appointed by the superintendent for staggered terms of 3 years, with the first appointments of one member for one year, 2 members for 2 years and 2 members for 3 years.~~

**Sec. 9. 24-A MRSA §2386, sub-§§10, 11, 12 and 15,** as enacted by PL 1991, c. 885, Pt. B, §12 and affected by §13, are repealed.

**Sec. 10. 24-A MRSA §2386-A,** as corrected by RR 1993, c. 1, §59, is repealed.

**Sec. 11. 24-A MRSA c. 26** is enacted to read:

### CHAPTER 26

## THE WORKERS' COMPENSATION RESIDUAL MARKET DEFICIT RESOLUTION AND RECOVERY ACT

### §2391. Title and scope of chapter

**1. Title.** This chapter may be known and cited as "The Workers' Compensation Residual Market Deficit Resolution and Recovery Act."

**2. Scope.** This chapter establishes an efficient and effective mechanism for funding the obligations of the residual market mechanism in the State arising from workers' compensation insurance policies with initial effective dates or renewal dates between January 1, 1988 and December 31, 1992.

### §2392. Definitions

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

**1. Association.** "Association" means the Maine Insurance Guaranty Association.

**2. Board.** "Board" means the governing board of the Maine Workers' Compensation Residual Market Pool.

**3. Chapter 250.** "Chapter 250" means Bureau of Insurance Rules, Chapter 250, "Requirements for Eligibility to Self-Insurer Workers' Compensation Benefits," as amended and as in existence prior to the effective date of this chapter.

**4. Chapter 440.** "Chapter 440" means Bureau of Insurance Rules, Chapter 440, "Plan of Operation for the Workers' Compensation Residual Market Mechanism," as amended, as in existence prior to the effective date of this chapter and as modified in this chapter.

**5. Delinquent insurer.** "Delinquent insurer" means an insurer that has not timely paid in full that insurer's allocated share pursuant to section 2393, subsection 1, paragraph A, subparagraphs (1) or (2) or section 2393, subsection 1, paragraph B, subparagraphs (1) to (5), except as provided in section 2393, subsection 1, paragraph A, subparagraph (3), division (d) and section 2393, subsection 1, paragraph B, subparagraph (6), division (d).

**6. Employer.** "Employer" means any employer in the State that, at any time relevant under this chapter, is required under the Workers' Compensation Act to secure workers' compensation benefits for its employees.

**7. Expense constant.** "Expense constant" means a premium charge approved by the superintendent that applies to every policy, in addition to other premium charges, covering expenses such as those for issuing, recording and auditing that are common to all workers' compensation policies regardless of premium size.

**8. Fresh start period.** "Fresh start period" means the period from January 1, 1988 to December 31, 1992.

**9. Initial surcharge period.** "Initial surcharge period" means the period from July 1, 1995 to June 30, 2003.

**10. Insured employer.** "Insured employer" means an employer in the State that, on or after July 1, 1995, secures or continues to secure workers' compensation benefits under the Workers' Compensation Act for its employees through the purchase of an insurance policy.

**11. Insurer.** "Insurer" means every insurer or group of affiliated insurers authorized to provide workers' compensation insurance in the State at any time during the fresh start period. For purposes of this chapter, a group of affiliated companies under common ownership, management or control is treated as one entity.

**12. Large deductible policy.** "Large deductible policy" means a workers' compensation policy written with a per occurrence deductible in excess of \$5,000 or a medical deductible in excess of \$500.

**13. Major insurer.** "Major insurer" means any insurer that was designated by the superintendent as a servicing carrier in the workers' compensation residual market in the State as of October 1, 1986.

**14. Minor insurer.** "Minor insurer" means any insurer other than a major insurer.

**15. Net direct written premium.** "Net direct written premium" means the Maine direct gross premiums charged less all return premiums, except dividends and savings refunded under participating policies, returned to policyholders for all Workers' Compensation and Occupational Disease Insurance written in this State. Excess workers' compensation insurance is not considered "net direct written premium."

**16. Net present value.** "Net present value" is the sum of future payments, discounted to a specified valuation date at the discount rate provided.

**17. Plan year.** "Plan year" means, for an employer, the period beginning on the self-insured employer's plan approval or renewal date and ending the day before the next plan renewal or anniversary date. The plan renewal date for a member of a group self-insurer is the group's plan renewal date; the plan approval date for a new member joining an established group is the effective date of group membership. The plan year may be less than 12 months as a result of changes in plan accounting periods, midyear entry into a group self-insurance plan or termination of self-insurance authorization.

**18. Policy year.** "Policy year" means the following:

A. With respect to a particular calendar year, all policies issued or renewed in that calendar year and all subsequent events occurring in later years relating to those policies, including premium adjustments, audit results and claims experience under those policies; and

B. With respect to a particular employer, the 12-month period beginning upon the date of issuance or renewal of a policy and ending the day before the next renewal date and all subsequent events occurring in later years relating to those policies, including premium adjustments, audit results and claims experience under that policy.

**19. Pool.** "Pool" means the Maine Workers' Compensation Residual Market Pool described in and governed by chapter 440.

**20. Residual market.** "Residual market" means the instrument to provide coverage to employers not able to obtain coverage in the voluntary market.

**21. Self-insured employer.** "Self-insured employer" means an employer that, on or after July 1, 1995, secures or continues to secure workers' compensation through a self-insured program under the Workers' Compensation Act as approved by the superintendent pursuant to the provisions of Title 39-A, section 403, subsection 3.

**22. Self-insured group or groups.** "Self-insured group or groups" means a self-insured group approved by the superintendent pursuant to chapter 250, section 3.

**23. Superintendent.** "Superintendent" means the Superintendent of Insurance.

**24. Surchargeable premium.** "Surchargeable premium" means:

A. For insured employers, the manual workers' compensation premium applicable to the insured employer, as adjusted by any applicable experience modification factor, premium discount, expense constant and any other debits or credits to a lawfully received premium. In calculating the surchargeable premium for retrospectively rated policies and large deductible policies, "surchargeable premium" means the discounted workers' compensation standard premium, which is the manual premium that would apply to the insured employer absent the retrospectively rated or large deductible nature of the policy, as adjusted by any applicable experience modification factor, premium discount and expense constant. For retrospectively rated and large deductible policies, the insurer shall calculate a discounted standard premium amount utilizing estimated payrolls at policy inception, subject to the final determination upon audit, applying the insurer's manual rates, the insured's experience modification factor, any premium discount, expense constant and other debits or credits to a lawfully received premium. When calculating the discounted standard premium for policies with large deductibles, the maximum credit for the deductible option may not be greater than the amount approved by the superintendent in the most recent advisory loss cost filing for a \$5,000 indemnity deductible.

B. For self-insured employers, the manual workers' compensation premium adjusted by the experience modification factor applicable to the self-insured employer, and any applicable premium discount and expense constant. For purposes of this definition, "manual premium" means the workers' compensation premium that would have been applicable to the individual self-insured employer if calculated using the advisory loss costs in effect at the time the surcharge is due multiplied by 1.2, applying the rating rules, excluding any premium discount, and experience rating procedure approved by the superintendent for the designated workers' compensation advisory organization pursuant to section 2382-B, to the exposure and experience of the individual self-insured employer. For a self-insured employer who is a member of a self-

insurance group, "surchargeable premium" means the actual amount of workers' compensation premium that is paid to the self-insurance group including experience modification, premium discount and expense constant in accordance with the requirements of chapter 250, but excluding any surplus distributions credited against or applied to reduce premiums.

**25. Timely pay; timely paid; timely payment.** "Timely pay," "timely paid" or "timely payment" means payment by the party responsible for the payments on or before the due date specified in this chapter.

**26. Voluntary market.** "Voluntary market" means the workers' compensation insurance market in which insurance companies voluntarily offer coverage to applicants who meet the insurers' underwriting standards or guidelines.

**27. Workers' Compensation Act.** "Workers' Compensation Act" means and refers to the Maine Workers' Compensation Act of 1992, as amended.

**28. Worker's compensation residual market mechanism.** "Worker's compensation residual market mechanism" or "residual market mechanism" means the workers' compensation residual market mechanism described in and governed by Chapter 440.

### **§2393. Initial funding of pool**

**1. Payments by insurers.** Insurers shall pay to the pool on or before January 1, 1996 the amount of \$65,000,000, as follows.

A. Major insurers shall pay to the pool 90% of the \$65,000,000 payment, which is \$58,500,000. Each major insurer shall pay to the pool that major insurer's allocated share of the payment required by this paragraph as determined in accordance with the following:

(1) If the major insurer's percentage of the total net direct written premium in the voluntary workers' compensation market in the State for the calendar years 1989 and 1990 was less than 3.4% according to data compiled by the National Council on Compensation Insurance, then the major insurer must pay to the pool \$4,906,000;

(2) If the major insurer's percentage of the total net direct written premium in the voluntary workers' compensation market in the State for the calendar years 1989 and 1990 was equal to or greater than 3.4%, according to data compiled by the National Council on Compensation Insurance, then

the major insurer must pay \$4,906,000 less one of the following credits:

(a) If the major insurer's percentage of total net direct written premium in the voluntary market exceeded 25% for each of the calendar years 1989 and 1990, then \$1,811,000;

(b) If the major insurer's percentage of total net direct written premium in the voluntary market exceeded 10% for each of the calendar years 1989 and 1990, then \$1,772,000;

(c) If the major insurer's percentage of total net direct written premium in the voluntary market exceeded 10% for either calendar year 1989 or 1990, then \$807,000;

(d) If the major insurer's percentage of total net direct written premium in the voluntary market exceeded 7.5% for each of the calendar years 1989 and 1990, then \$596,000; or

(e) For any other major insurer that qualifies for credit under this subparagraph, \$289,000;

(3) One or more major insurers may agree in writing to pay more or less than the amount of their allocated share under subparagraph (1) or (2); except that:

(a) A major insurer may not pay less than the allocated share under subparagraph (1) or (2), unless the written agreement is executed by all major insurers that have timely paid or agreed in writing to timely pay in full at least their allocated share;

(b) The total amount of timely payments to the pool by major insurers is equal to or greater than \$58,500,000;

(c) The pool is made a 3rd-party beneficiary to a written agreement among certain major insurers that provides for:

(i) Timely payments to the pool by major insurers that are equal to \$58,500,000; and

(ii) An express right of the pool to enforce the payments required by that agreement; and



(d) Timely payment of any share agreed upon in writing pursuant to this subparagraph in an amount less than the allocated share under subparagraph (1) or (2) constitutes timely payment in full of an allocated share for purposes only of subsection 1, paragraph C or section 2396, subsection 1.

(4) If the total amount paid according to the requirements of subparagraphs (1), (2) and (3) exceeds \$58,500,000, the pool must disburse within 30 days the excess amount by refunding to each major insurer that has timely paid in full at least its allocated share under subparagraph (1) or (2) in direct proportion to the amount that each major insurer paid to the pool as part of the total major insurers' payment required by this paragraph.

B. Minor insurers shall pay to the pool 10% of the \$65,000,000 payment, which is \$6,500,000. Each minor insurer shall pay to the pool an allocated share of the payment required by this paragraph as determined in accordance with the following.

(1) Except as provided in subparagraph (2), an allocated share equal to the sum of the amounts described in divisions (a) to (c) must be paid to the pool.

(a) Minor insurers authorized to provide workers' compensation insurance in the State at any time during 1989 pay 59% of the \$6,500,000 payment, with each minor insurer paying a per capita share.

(b) Minor insurers authorized to provide workers' compensation insurance in the State at any time during 1990 pay 38% of the \$6,500,000 payment, with each minor insurer paying a per capita share.

(c) Minor insurers authorized to provide workers' compensation insurance in the State at any time during 1991 pay 3% of the \$6,500,000 payment, with each minor insurer paying a per capita share.

(2) A minor insurer that qualifies for a partial exemption under this subparagraph shall pay to the pool the greater of \$10,000 or 2% of the minor insurer's average annual after-tax adjusted earnings for the 3 calendar years immediately prior to enactment of

this chapter as reported in the minor insurer's annual statement filed with the superintendent. A minor insurer qualifies for a partial exemption from the per capita share payment required by this paragraph if, for the 3 calendar years immediately prior to enactment of this chapter, as reported in the minor insurer's annual statement filed with the superintendent, the minor insurer's:

(a) Average annual after-tax adjusted earnings were less than \$2,000,000; and

(b) Surplus as to policyholders did not exceed \$12,500,000.

(3) A minor insurer that has not received a partial exemption under subparagraph (2) is entitled to participation credits determined as follows.

(a) For any policy year beginning on or after January 1, 1989, the share for each minor insurer authorized to write workers' compensation insurance in the year to which the calculation in this division pertains is reduced by .05% for each .10% that its participation ratio for the year to which the assessment relates exceeds its participation ratio for the base period as calculated by dividing the minor insurer's net direct written premium for the base period by the total minor insurer's net direct written premium for the base period. For purposes of this division, "base period" means the calendar years 1983 to 1986. The participation ratio for the year to which the assessment relates is calculated by dividing the minor insurer's net direct written premium in that calendar year by the total net direct written premium of minor insurers that were authorized at any time during that year;

(b) Credits earned by a minor insurer may not result in a minor insurer's participation ratio being adjusted to less than 1/2 of its otherwise allocated share;

(c) For a minor insurer not authorized to write workers' compensation insurance in 1986, its adjusted participation ratio is 1/2 of its participation ratio in the year to which the calculation applies;

(d) Any deficiency must be distributed among all minor insurers in proportion to the adjusted participation ratio, after credit adjustments; and

(e) For purposes of this subparagraph, "adjusted participation ratio" means a minor insurer's participation ratio as calculated in accordance with this subparagraph and after application of any credits. For purposes of this subparagraph, net direct written premium does not include premiums for residual market risks reinsured by the pool or retrospective rating plan adjustments on policies effective prior to January 1, 1988.

(4) The total amount of the differences between the following must be paid by those minor insurers that actually paid their allocated share as of January 1, 1996 by allocating the difference to those minor insurers in the same proportion as each such minor insurer's payment bears to the total aggregate amount actually paid by minor insurers as of January 1, 1996:

(a) The otherwise allocated share payments under subparagraph (1); and

(b) The payments made by minor insurers that qualify for a partial exemption as provided in subparagraph (2) and any participation credits under subparagraph (3).

(5) In the event a minor insurer for any reason fails to pay its allocated share, as described in this paragraph, by January 1, 1996, then the pool may charge the deficiency resulting from those uncollected amounts to all minor insurers that actually pay their allocated share as of January 1, 1996 by allocating that deficiency to those minor insurers in the same proportion as each such minor insurer's payment bears to the total aggregate amount actually paid by minor insurers as of January 1, 1996. Those minor insurers are subrogated to the pool's right to collect such amounts from the delinquent minor insurer.

(6) One or more minor insurers may agree in writing to pay more or less than the amount of their allocated share under subparagraphs (1) to (4), except that:

(a) A minor insurer may not pay less than the allocated shares under subparagraphs (1) to (4) unless the writ-

ten agreement is executed by all minor insurers that have timely paid or agreed in writing to timely pay in full at least their allocated share;

(b) The total amount of timely payments to the pool by minor insurers is equal to or greater than \$6,500,000;

(c) The pool is made a 3rd-party beneficiary to a written agreement among certain minor insurers that provides for:

(i) Timely payments to the pool by minor insurers that are equal to \$6,500,000; and

(ii) An express right of the pool to enforce the payments required by that agreement; and

(d) Timely payment of any share agreed upon in writing pursuant to this subparagraph in an amount less than the allocated share under subparagraphs (1) to (4) constitutes timely payment in full of an allocated share for purposes only of subsection 1, paragraph C or section 2396, subsection 1.

(7) If the total amount paid according to the requirements of subparagraphs (1) to (6) exceeds \$6,500,000, the pool must disburse within 30 days the excess amount by refunding to each minor insurer that has timely paid in full at least its allocated share under subparagraphs (1) to (4) in direct proportion to the amount that each minor insurer paid to the pool as part of the total minor insurers' payment required by this paragraph.

C. The pool shall bill and collect from each insurer the allocated share established by paragraphs A and B. If an insurer has not timely paid its allocated share in full to the pool on or before January 1, 1996, then the insurer is considered delinquent and the following applies.

(1) The pool has all the rights, powers and authority to take all necessary and appropriate action, as determined in the pool's discretion, against the delinquent insurer to collect any amounts not paid as and when due, and any deficiency is assessed interest at the rate of 10% per annum from January 1, 1996 until full payment from the insurer is received by the pool. The pool is entitled to an award of and reimbursement from any

delinquent insurer of the costs of enforcement and collection of any amounts not paid as and when due, including all costs and expenses, reasonable attorney's and paralegal's fees and any other professional fees and expenses associated with the pool's enforcement and collection efforts.

(2) If the pool has received \$58,500,000 from major insurers or \$6,500,000 from minor insurers, valued as of January 1, 1996, the pool shall provide prompt written notice of this fact to insurers in the same category, either major or minor. Within 90 days following a request, the pool shall assign all such rights, powers and authority, including the entitlement to costs and expenses, to any insurers in the same category of the delinquent insurer that have requested an assignment and timely paid in full at least the allocated share established by paragraphs A and B.

(3) The pool has the right to set off any amounts due under this chapter to the pool from a delinquent insurer against any sums credited by or due from the pool to the delinquent insurer and against any other property of the delinquent insurer in the possession or under the control of the pool.

(4) Regardless of whether any action is taken pursuant to subparagraphs (1) to (3), the superintendent is authorized to exercise all authority as may be provided by and in accordance with law to take appropriate action against any delinquent insurer. In addition to any other authority the superintendent may possess under law, the superintendent upon notice and hearing may suspend a delinquent insurer's authority to transact the business of insurance in the State for so long as the insurer remains delinquent. The authority granted to the superintendent under this paragraph and jurisdiction vested in the bureau are concurrent with other actions by other parties authorized in this paragraph.

(5) Any collection by or on behalf of the pool, or amounts obtained by setoff with respect to a delinquent insurer, are retained by the pool, until the insurers in the same category as the delinquent insurer have paid the total amount required for that category, plus interest pursuant to subparagraph (1) and costs and expenses of the pool for collection in an amount not to exceed the delinquent share, valued as of January 1, 1996, to the pool. Any excess must be dis-

tributed within 90 days among the insurers in the same category as the delinquent insurer that have timely paid in full at least the allocated share established by paragraphs A and B in direct proportion to that insurer's payment to the pool as part of the total payments required by paragraph A or B, except that any collection on behalf of the pool as the result of an assignment pursuant to subparagraph (2) must be distributed as agreed among the insurers that receive the assignment from the pool.

(6) No defense or substantive argument that could have been raised or asserted related to an insurer's status as a major insurer or minor insurer or any purported contractual rights under prior or existing law is extinguished or otherwise abridged in any proceeding against a delinquent insurer instituted under subparagraphs (1) to (5).

**2. Payments by employers.** Employers shall pay to the pool the following amounts.

A. Employers shall pay initial surcharges, in the manner described in this subsection, in an aggregate amount equal to \$110,000,000, calculated on a net present value basis using January 1, 1995 as the valuation date, a discount rate of 5% and the midpoint of each calendar quarter as the date of actual receipt of surcharge proceeds remitted to the pool for each calendar quarter. Proceeds included in determining when the \$110,000,000 initial surcharge is fully paid consist of:

(1) All proceeds from surcharges under this chapter on policies with effective dates on or after July 1, 1995 and surcharges under this chapter on self-insured employers with plan years commencing on or after July 1, 1995; and

(2) All proceeds from surcharges actually received in immediately available funds by the pool after 5:00 p.m., September 30, 1995, whether the proceeds result from a surcharge under this chapter or under laws existing prior to enactment of this chapter.

B. Proceeds from surcharges under existing laws actually received in immediately available funds by the pool on or before 5:00 p.m., September 30, 1995 may not be credited against the initial surcharge requirement.

C. The pool shall maintain records reflecting actual dates of receipt of proceeds from surcharges sufficient to enable the net present value calculation.

D. The initial surcharges must be paid in accordance with the following provisions.

(1) Beginning July 1, 1995 every insurer writing workers' compensation insurance in the State shall collect from workers' compensation insurance policyholders and pay to the pool a surcharge on all surchargeable premiums received by the insurer for those policies. During the initial surcharge period, the surcharge is at a fixed rate of 6.32% of the surchargeable premium. The surcharge may be applied only to policies with an effective date on or after 12:01 a.m., July 1, 1995. All surcharges received by each insurer during the preceding calendar quarter must be remitted to the pool within 15 days following the end of each calendar quarter, except that servicing carriers shall remit on February 15th, May 15th, August 15th and November 15th of each year. Any surcharge proceeds not remitted on a timely basis accrue interest at the rate of 10% per annum from the due date until paid in full. The pool is entitled to reimbursement from any insurer failing to remit surcharge proceeds on a timely basis for the pool's costs of collection of those amounts, including all collection costs and fees, reasonable attorney's and paralegal's fees and any other professional fees and expenses associated with the pool's collection efforts. The surcharges described in this subparagraph do not apply to reinsurance recognized by the superintendent pursuant to chapter 250, section 2, paragraph G or section 3, paragraph G, procured by an individual self-insured employer or a self-insured employer group.

(2) Self-insured employers that secured their obligation to provide workers' compensation benefits under the Workers' Compensation Act through issuance or renewal at any point during the fresh start period of an insurance policy for any portion of any of the policy years 1988 to 1992 are subject to a surcharge as provided in the following.

(a) During the initial surcharge period the rate of surcharge is 6.32% of the surchargeable premium as adjusted pursuant to this paragraph for the self-insured employer's current plan year utilizing estimated payroll as submitted with the self-insured employer's renewal application for authority to self-insure, in accordance with Chapter 250, section 2, paragraph C, sub-

paragraph 1, division c or Chapter 250, section 3, paragraph C, subparagraph 1, division g as applicable, subject to audit pursuant to division (d), subdivision (iii). If the plan year in which a surcharge is collected or a credit is distributed is shorter than 12 months, due to a change in accounting period or termination of self-insurance authorization, the surcharge or credit for that plan year must be based upon the final audited payroll for the short plan year.

(b) All surcharges must be collected or distributed on a plan year basis. In each plan year, the percentage of the surchargeable premium to be surcharged is the same percentage as is applied to an insured employer whose policy period coincided with the plan year.

(c) Each self-insured employer shall pay surcharges relating to only that portion of the policy years 1988 to 1992 in which the self-insured employer insured its workers' compensation obligations. The surcharge factor, as determined by the board under this chapter, must be adjusted to take into consideration the policy years or portions of policy years 1988 to 1992 in which a self-insured employer was self-insured.

The adjustment is determined as follows. The surcharge factor must be multiplied by the factor attributed to each of the years 1988 to 1992, as set forth in the table below. If a self-insured employer was insured only during a portion of a policy year, then the factor for that year is prorated based on the ratio of the number of days in the policy year during which the self-insured employer was insured to 365 days.

<u>Policy Year</u>	<u>Factor</u>
<u>1988</u>	<u>28.48%</u>
<u>1989</u>	<u>30.70%</u>
<u>1990</u>	<u>23.26%</u>
<u>1991</u>	<u>11.55%</u>
<u>1992</u>	<u>6.01%</u>

(d) The board shall administer the surcharges on self-insured employers as follows.

(i) The board shall issue surcharge billings to self-insured employers, pursue collection of all invoiced surcharges, initiate legal proceedings as necessary to collect surcharges and maintain records adequate to administer the surcharge process. The records of the board and of the bureau form the basis for identifying self-insured employers who are subject to this paragraph.

(ii) Annual surcharges may be paid in a single lump sum within 30 days of the receipt of the pool's invoice or in quarterly installments at the self-insured employer's option. The board shall issue a yearly invoice as soon as practicable after the self-insured employer's plan approval or renewal date and receipt of all necessary supporting information from the superintendent. Each invoice must contain a schedule of dates when quarterly installments are due and clearly state the policy year or years for which the surcharge is imposed, the surcharge percentage multiplied by the factor applicable to each policy year and the amount of the surchargeable premium.

(iii) Each individual self-insured employer shall report final audited payrolls to the pool not later than 60 days after the end of each plan year and each self-insured employer that is a member of a self-insured group or the group's administrator, as the group may select, shall report final audited payrolls to the pool not later than 120 days after the end of each plan year and shall remit with the audit information any additional surcharges resulting from the audit.

(e) Self-insured employers have the following obligations with respect to the surcharge process.

(i) As a condition of continuing authorization to self-insure, each self-insured employer and each group self-insurance administra-

tor shall assist the board and the superintendent in the calculation, billing and collection of any applicable surcharge. The required assistance includes maintaining and providing, upon request of the board or the superintendent, actual premium history and all payroll and experience information necessary to calculate self-insured employer premiums, as specified in this subparagraph. Information provided by the self-insured employer is subject to audit by the pool and the superintendent at any time and self-insured employers shall provide to the pool, or its designee, and to the superintendent full and complete access to all books and records relating in any way to the audit. Group self-insurance administrators shall give prompt notice to the superintendent of any changes in group membership.

(ii) Information provided by self-insured employers to the board pursuant to this paragraph is confidential. The board shall protect the confidentiality of all self-insured employer information in its possession, whether the information is obtained directly from the self-insured employer or from the superintendent or a group administrator.

(iii) A self-insurance group may act as the collection agent for its members. Any group so electing shall notify the board. The board shall bill the group on a consolidated basis. The group shall remit its entire quarterly payment to the board within 30 days after receiving the invoice, whether or not any members remain in default and notify the board and the superintendent of any delinquency.

(iv) Each self-insured employer shall make provisions for possible surcharges in the normal course of operations and pay the full amount of any surcharge in-

stallment within 30 days after receiving an invoice from the board or the self-insured employer's self-insurance group. Late payments are subject to interest at the rate of 10% per annum.

(v) The failure of any self-insured employer or self-insurance group to comply with its duties under this paragraph constitutes grounds for suspension, revocation, termination of the option to self-insure, expulsion from a self-insurance group or other appropriate sanctions authorized under section 12-A, in addition to all procedures for the collection of past-due accounts otherwise available by law to the board or the governing body of the self-insurance group.

(f) The superintendent has the following responsibilities with respect to the surcharge process.

(i) The superintendent shall furnish to the board, on a monthly basis, a list of all self-insurance plan approvals, renewals and anniversaries that have occurred since the last report or for any other reason were not included in any previous report, including all approvals, terminations and membership changes for group self-insurers. For each employer listed, the superintendent shall provide all available information necessary for the board's imputed calculations under this paragraph, including: the date the new plan year began; the self-insurance group, if any, to which the self-insured employer belongs; the dates of coverage under each policy issued or renewed in policy years 1988 to 1992; the rating information for the current plan year, including estimated payroll by classification, premium rate for each classification, experience modification and other applicable rating adjustments; information relating to changes of ownership or control, changes of operations, changes

of name or organizational structure; and other information necessary to determine successorship.

(ii) The superintendent shall supplement promptly the initial report as necessary, including any revision to the self-insured employer's rating information on audit, any other additions or corrections to incomplete or inaccurate information provided in the initial report and the length of the plan year, if shorter than 12 months.

(g) Self-insured employers include any successor entity to a self-insured employer subject to the surcharge imposed by this subparagraph. A successor entity includes entities purchasing all or a portion of the assets of a self-insured employer subject to the surcharge or the surviving entity in any other merger, consolidation, reorganization or restructuring involving a self-insured employer subject to the surcharge imposed by this subparagraph. If business operations that were insured under a single workers' compensation insurance policy during any portion of the fresh start period are subsequently separately owned by virtue of any sale of assets, merger, consolidation, reorganization, dissolution, reincorporation, restructuring or other transaction or series of transactions, for purposes of this subparagraph each business is treated as a distinct employer, subject to surcharge as either an insured employer or a self-insured employer.

(h) A self-insured employer that secured its obligation to provide workers' compensation benefits under the Workers' Compensation Act through a self-insurance program approved by the superintendent for the entirety of that self-insured employer's policy years 1988 to 1992, in which the self-insured employer actually had an obligation to secure benefits under the Workers' Compensation Act is not subject to the surcharge.

(i) Self-insured employers that commence operations in the State on or after July 1, 1995 are

subject to surcharge under this subparagraph on the same basis as self-insured employers that secured compensation under the Workers' Compensation Act by the purchase of an insurance policy throughout the entire fresh start period.

(3) An employer may, as specified in this subparagraph, prepay all of its surcharges for a period of 10 consecutive policy years or plan years. The 10-year period starts with the employer's first renewal date or plan year following July 1, 1995. Within 30 days after the inception of the first plan year or first policy renewal date following July 1, 1995, if the employer intends to exercise this option, the employer must file with the pool written notice electing to make a lump-sum payment of surcharges and shall include with the notice the employer's full lump-sum payment. If the election is not made within 30 days after the first day of the first plan year or policy year following July 1, 1995, the option expires and is no longer available. The pool shall implement such procedures for administering this option as the board determines necessary. An employer that elects this option shall reimburse the pool for its expenses of administering this option for that employer, including the cost of individually allocating those costs to individual employers, in accordance with billing procedures developed and implemented by the board. This subparagraph does not eliminate or limit the employer's liability to pay adjusted surcharges or supplemental surcharges pursuant to paragraph E or section 2394.

For purposes of this subparagraph, "lump-sum payment" is the surcharge for the first year multiplied by 10 and discounted to net present value using:

- (a) A 5% discount rate;
- (b) The first day of the first plan year or policy year starting on or after July 1, 1995; and
- (c) An assumption that the surcharge for each of the 10 plan years or policy years would have been paid on the first day of each subsequent plan year or policy year.

E. The initial surcharge percentage may be adjusted by the pool in accordance with the following provisions.

(1) Each July 1st beginning in 2003, the board shall establish a surcharge percentage to be imposed on all workers' compensation insurance policies issued or renewed on or after that date until the effective date of any subsequent adjustment in the surcharge percentage established by the board; except that, if supplemental surcharges and assessments have commenced under section 2394, no further adjustments may be made under this subparagraph. The surcharge must be at a level determined by the board to be sufficient to produce cash receipts over the ensuing 24 months that, together with all other funds reasonably anticipated by the board to be available on a cash basis over that period, produce an amount not less than the pool's projected cash requirements to meet its obligations over that period. In making that determination, the board shall employ and rely upon the advice of professional and consulting services, including services available through the pool's internal staff, as the board determines necessary.

(2) If the surcharge percentage established under this subparagraph exceeds 6.32%, then a prepaid employer shall pay surcharges for that future assessment period at the same rate as those employers who paid annually, based upon the employer's surchargeable premium for the policy year or plan year to which the increased surcharge percentage applies. A prepaid employer may take a credit for the surcharges prepaid for that assessment period pursuant to section 2393, subsection 2, paragraph D, subparagraph (3) in an amount equal to the net present value calculated on a basis consistent with paragraph D, subparagraph (2), division (d), subdivision (ii). If the surcharge percentage is less than 6.32% for that future assessment period, then the pool shall refund to a prepaid employer an amount equal to the difference between the value of the lump-sum surcharge paid for the future assessment period calculated on a basis consistent with paragraph D, subparagraph (2), division (d), subdivision (ii) and the amount of surcharge due based upon the adjusted surcharge percentage and applicable surchargeable premium. For purposes of this subparagraph, "prepaid employer" means an employer who has elected to pay surcharges on a lump-sum basis pursuant to paragraph D, subparagraph (3).

(3) The board has authority to make interim adjustments in the surcharge percent-

age on or after July 1, 2003, to be effective on dates other than July 1st as specified by the board, to the extent considered necessary by the board to produce sufficient cash receipts from surcharges over the ensuing 24 months that, together with all other funds reasonably anticipated by the board to be available on a cash basis to the pool over the ensuing 24 months, will be sufficient to meet the pool's anticipated cash requirements over that period.

(4) In projecting the pool's anticipated cash requirements, the board shall maintain a reserve equal to 25% of the cash expenditures of the pool over the immediately preceding 12-month period.

F. The surcharges required by this subsection are considered premium for cancellation and nonrenewal purposes only and are not subject to premium tax, Maine Insurance Guaranty Association assessments, agents' commissions or other payments required on insurance policy premiums.

G. Employer surcharges required by this chapter are suspended if:

(1) The board determines that the pool's assets are adequate to satisfy all remaining obligations, including any necessary repayment to insurers that satisfy the requirements of subparagraph (2); and

(2) The insurers and employers have been repaid by the pool in amounts necessary to produce a ratio of actual surcharges under this subsection paid by employers calculated on a net present value basis using January 1, 1995 as a valuation date and a discount rate of 5% to actual payments by insurers to the pool under subsection 1, valued as of January 1, 1996, not including employer surcharges remitted to the pool by insurers, that is the same as 11 to 6.5, for employers and insurers respectively.

H. If the board suspends initial surcharges and the pool subsequently requires additional assets to satisfy remaining obligations, the board shall order additional initial surcharges consistent with this subsection. The board shall review the relationship between the pool's assets and liabilities as often as determined necessary by the board, but at least annually. Projections of assets and liabilities contained in any quarterly or annual statements of operation prepared by or at the direction of the board do not constitute a determination under this subsection.

**3. Payments by Maine Insurance Guaranty Association.** The association shall pay to the pool \$1,538,039 on or before February 15th, May 15th, August 15th, and November 15th of each year for 40 consecutive calendar quarters beginning August 15, 1996.

A. Each payment made by the association to the pool under this subsection is treated as a covered claim pursuant to section 4435, subsection 4, except that any provision or authority for the association to seek reimbursement or recoupment from any source other than by assessments to association member insurers does not apply. This section does not limit or impair a member insurer's right to recoupment under section 4447.

B. The quarterly payments by the association to the pool as required by this subsection must be made regardless of the financial condition or actual or projected cash requirements of the pool.

### **§2394. Funding subsequent cash deficiencies**

If the insurers have made payments to the pool totalling \$65,000,000 valued as of January 1, 1996 pursuant to section 2393, subsection 1 and the employers have paid surcharges totalling \$110,000,000 calculated on a net present value basis using January 1, 1995 as a valuation date and a discount rate of 5%, pursuant to section 2393, subsection 2, on each July 1st following the full payment date, or more often if the board considers it necessary:

**1. Determine cash requirements.** The board shall determine the amount of cash receipts that will be required over the ensuing 24 months, in addition to all other funds reasonably anticipated by the board to be available on a cash basis over that period, to produce an amount not less than the pool's projected cash requirements to meet its obligations over that period. In making this determination, the board shall employ and may rely upon professional and consulting services, including such services as may be available through its internal staff, as the board considers necessary. If cash requirements determinations under this subsection commence, any cash requirements determinations and initial surcharge percentage adjustments under section 2393, subsection 2, paragraph E cease. In projecting the pool's anticipated cash requirements, the board shall maintain a reserve equal to 25% of the cash expenditures of the pool over the immediately preceding 12 months; and

**2. Establish supplemental surcharges and assessments.** The pool shall establish, bill and collect supplemental surcharges from employers and assessments from insurers in an aggregate amount determined by the board to be sufficient to satisfy the



pool's cash requirements, determined under subsection 1, in accordance with the following provisions.

A. Liability for funding cash requirements determined under subsection 1 is allocated 70% to employers and 30% to insurers.

B. The pool shall establish a surcharge on employers, reflected as a percentage of surchargeable premium, that the board reasonably expects will be sufficient to generate cash receipts over the ensuing 24-month period equal to 70% of the pool's cash requirements for such period as determined pursuant to subsection 1. The resulting employer surcharges are billed and collected in the same manner as provided in section 2393, subsection 2, paragraph D.

C. The pool shall establish, bill and collect from insurers assessments equal to the remaining 30% of the pool's cash requirements. Major insurers are responsible for 90% and minor insurers are responsible for 10% of these assessments.

(1) Assessments under this paragraph must be determined and billed quarterly by the pool in an amount equal to 42.9% of the cash receipts actually received by the pool from employer supplemental surcharges during the immediately preceding calendar quarter and must be allocated among existing insurers in the same category in direct proportion to amounts paid by or otherwise collected from those insurers by or on behalf of the pool under section 2393, subsection 1. Assessments billed by the pool must be paid within 30 days of the billing date.

(2) The enforcement provisions established by section 2393, subsection 1, paragraph C apply to assessments on insurers under this paragraph.

D. For purposes of establishing the surcharge upon employers, the pool's cash requirements may not include any amounts necessary to compensate the pool for any failure by insurers to pay the full amount of the assessments charged to insurers under this subsection.

For the purposes of this section, "full payment date" means the date on which insurers have paid the entire amount required pursuant to section 2393, subsection 1 and on which employers have paid the entire amount required pursuant to section 2393, subsection 2.

### **§2395. Revisions to residual market mechanism plan of operation**

**1. Plan manager.** The board shall appoint a plan manager who reports to and serves at the pleasure, direction and control of the board. The board has the exclusive right to retain any individual or organization as plan manager and to terminate the plan manager. The board is exclusively responsible for establishing the terms and conditions, including compensation, under which the plan manager serves.

**2. Appointment of employer representatives.** The 5 members of the board of governors serving as representatives of the business community of the State are appointed by the Governor for staggered 3-year terms, with at least one member appointed each year. All members whose terms have not expired on or before July 3, 1995 continue on the board until their terms expire.

**3. Staff and consultants.** The board may employ, or otherwise retain, staff and consultants as the board considers necessary or appropriate to effect the purposes of this chapter and chapter 440 and to otherwise administer pool operations. The board or its designee is exclusively responsible for establishing the responsibilities and compensation of all staff employed by the pool and are exclusively responsible for establishing the terms and conditions, including compensation, of all consultants retained by the pool.

**4. Transfer of policies.** An insurer may transfer any rights, obligations and liabilities of a workers' compensation insurance policy issued pursuant to the residual market mechanism.

**5. Authority to borrow money.** The pool may, when directed by the board, borrow money and enter into financing transactions in the name of and on behalf of the pool and issue evidences of indebtedness in connection with those transactions. To secure the payment of any indebtedness incurred pursuant to this subsection, the pool may pledge and create a lien upon any or all of its receivables or revenues or grant such other security interests in its property as the board determines reasonable and proper for the security of the holders of indebtedness. The terms and conditions of any borrowing, including, but not limited to, dates, maturities, interest and rates, must be established by the board.

### **§2396. Coordination of law**

**1. Causes of action extinguished; exception.** Notwithstanding Title 1, section 302, a cause of action or administrative proceeding that could have been asserted or instituted, whether or not pending, prior to or on the effective date of this Act arising out of or relating to sections 2386 and 2386-A and their predecessor statutes, sections 2366 and 2367 or due to

an insurer's performance as a servicing carrier or other participation in the residual market mechanism may not exist or be brought against the pool, the board or an insurer that has timely paid to the pool in full at least the allocated share pursuant to section 2393, subsection 1. This subsection does not apply to: claims by servicing carriers for quarterly reimbursement from the pool; claims arising from a written agreement among any of the major insurers and the pool relating to payment of the allocated share of a delinquent insurer pursuant to section 2393, subsection 1; claims by an individual policyholder against its insurer; or claims by employees for benefits under residual market policies.

**2. Repeal of chapter 720.** The Bureau of Insurance Rules, chapter 720, is repealed effective July 1, 1995. The collection procedures set forth in section 2393, subsection 2, paragraph D, subparagraph (2) apply to surcharges assessed under chapter 720 prior to the effective date of this chapter.

**3. Vacation of orders.** All orders of the superintendent relating to surcharges and assessments arising out of section 2386-A are vacated except to the extent that they establish the amount and method of calculation of surcharges paid or to be paid by employers on policies issued or renewed with effective dates on or before June 30, 1995, and self-insurance plan years beginning on or before June 30, 1995. All other decisions, orders and rules issued and adopted by the superintendent relating to workers' compensation insurance are invalid to the extent that they are inconsistent with this chapter.

**Sec. 12. 24-A MRSA §4435, sub-§4,** as amended by PL 1989, c. 751, §3, is further amended to read:

**4. Covered claim.** "Covered claim" means an unpaid claim, including one for unearned premiums but excluding one for punitive damages, arising under and within the coverage and applicable limits of a policy of a kind of insurance referred to in section 4433 to which this subchapter applies issued by an insurer ~~which~~ that becomes an insolvent insurer after May 9, 1970, and where:

- A. The claimant or insured is a resident of this State at the time of the insured event; or
- B. The property from which the claim arises is permanently located in this State.

"Covered claim" ~~shall~~ does not include any amount due any insurer, reinsurer, affiliate, insurance pool or underwriting association, as subrogation recoveries or otherwise, except that any payment made to the workers' compensation residual market pool pursuant to section 4438, subsection 1, paragraph A-1 must be included as a covered claim.

**Sec. 13. 24-A MRSA §4435, sub-§5,** as enacted by PL 1969, c. 561, is amended to read:

**5. Insolvent insurer.** "Insolvent insurer" means an insurer:

- A. Authorized to transact insurance in this State either at the time the policy was issued or when the insured event occurred; and
- B. Determined to be insolvent by a court of competent jurisdiction.

Effective July 1, 1995, the workers' compensation residual market pool, as created by the Bureau of Insurance Rules, Chapter 440, is deemed an insolvent insurer.

**Sec. 14. 24-A MRSA §4438, sub-§1, ¶A-1** is enacted to read:

A-1. Pay to the workers' compensation residual market pool the sum of \$1,538,039 on or before February 15th, May 15th, August 15th and November 15th of each year beginning August 15, 1996 and continuing for 40 consecutive calendar quarters. Each payment made under this paragraph must be treated as the payment of a covered claim except that the association may not seek reimbursement or recoupment from any source other than by assessments to member insurers. Member insurers are allowed to recognize assessments made pursuant to this paragraph in rates and premiums as provided in section 4447;

**Sec. 15. 24-A MRSA §4438, sub-§1, ¶C,** as amended by PL 1989, c. 67, §5, is further amended to read:

C. Allocate claims paid and expenses incurred among the 3 accounts separately; and assess member insurers separately for each account in amounts necessary to pay:

- (1) The obligations of the association under paragraph A, subsequent to an insolvency, the obligations of the accounts for shortfalls under section 4440-A, and for preinsolvency assessments, if required by section 4440, subsection 3, paragraph B, and the obligations of the association under paragraph A-1;
- (2) The expenses of handling covered claims subsequent to an insolvency;
- (3) The cost of examinations under section 4445; and
- (4) Other expenses authorized by this subchapter;

**Sec. 16. 24-A MRSA §4440, sub-§1,** as amended by PL 1989, c. 67, §6, is further amended to read:

**1. Proportion.** The assessments of each member insurer provided for under section 4438 ~~shall~~ must be in the proportion that the net direct written premiums of the member insurer for the calendar year preceding the assessment on the kinds of insurance in the account bears to the net direct written premiums of all member insurers for the same calendar year on the kinds of insurance in the account, except that assessments to cover a shortfall in any account ~~shall be~~ are determined in accordance with section 4440-A. In the case of a withdrawn insurer, the average of its net direct written premium for the 5 calendar years prior to withdrawal ~~shall~~ excluding premium on business written as a workers' compensation residual market servicing carrier for assessments made on or after January 1, 1996, must be used as its assessment base for any year following withdrawal in which the insurer has no net direct written premium.

**Sec. 17. 24-A MRSA §4440-A, sub-§2,** as repealed and replaced by PL 1989, c. 641, §1 and affected by §2, is amended to read:

**2. Limit on assessment.** Subject to the 2% limitation, an assessment made under this section may not exceed 5% of the average of a member insurer's net income of the 3 years prior to the year in which the assessment is made for any member insurer:

A. That has surplus of less than ~~\$12,000,000~~ \$15,000,000 and either a ratio of total net direct written premium to total surplus greater than 2 or net income of less than \$250,000 for the year preceding the assessment. For purposes of this subsection, "net income" means the sum of underwriting income and investment income, net of dividends to policyholders and federal and foreign income taxes incurred, as reported on the insurer's annual statement filed with the superintendent. "Total surplus" means surplus as regards policyholders, as reported on the insurer's annual statement filed with the superintendent; or

B. That has a surplus of less than ~~\$12,000,000~~ \$15,000,000 and has fewer than 3,000 policyholders.

**Sec. 18. Allocation.** The following funds are allocated from Other Special Revenue funds to carry out the purposes of this Act.

1995-96	1996-97
---------	---------

**PROFESSIONAL AND  
FINANCIAL  
REGULATION,  
DEPARTMENT OF**

**Bureau of Insurance**

All Other	(\$50,000)	(\$50,000)
-----------	------------	------------

Deallocates funds to reflect savings from the elimination of consultant and public hearing costs that are no longer necessary after repeal of the 1987 workers' compensation residual market mechanism.

**Sec. 19. Nonseverability.** The following provisions apply.

1. If any portion of the Maine Revised Statutes, Title 24-A, chapter 26 ultimately is declared invalid or determined to be unenforceable in whole or in part by final unappealable judgment of a court of competent jurisdiction and that judgment has the effect of prohibiting either payment to or collection by the workers' compensation residual market pool of the payments required by Title 24-A, section 2393, subsections 1 to 3 or Title 24-A, section 2394, then this Act is invalid and unenforceable and has no force or effect whatever. Following such judgment, all amounts paid to the pool under Title 24-A, chapter 26 must be refunded as soon as possible, together with any investment earnings on those amounts, to the insurers, Maine Insurance Guaranty Association and employers in direct proportion to payments to the pool pursuant to Title 24-A, sections 2393 and 2394, and all statutory provisions repealed by this Act and all decisions, orders and rules vacated under section 2396, subsection 3 are revived and have full force and effect.

2. Notwithstanding subsection 1, chapter 440 of the Bureau of Insurance Rules remains in full force and effect, except that the Superintendent of Insurance shall institute rulemaking under Title 5, chapter 375, subchapter II to repeal the following sections or portions of chapter 440:

A. In subchapter I, section 2, the reference to "2367";

B. In subchapter I, section 5, paragraph C, the words "with the approval of the superintendent";

C. In subchapter II, section 7, paragraph A, subparagraph (2), the words "subject to the approval of the superintendent";

D. In subchapter II, section 7, paragraph B, last paragraph, the words "by the superintendent";

E. In subchapter II, section 7, paragraph C, last paragraph, the words "by the superintendent";

F. In subchapter II, section 9, first sentence, the words "subject to the approval of the superintendent";

G. In subchapter II, section 9, paragraph B in its entirety;

H. In subchapter II, section 10, paragraph C, subparagraph (2), the words "by Title 24-A, section 2367 or";

I. In subchapter II, section 10, paragraph H, the words "pursuant to Title 24-A, section 2367";

J. In subchapter II, section 13, paragraphs A, C, D and E;

K. In subchapter II, section 14 in its entirety; and

L. In subchapter II, section 15 in its entirety.

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

Effective June 23, 1995.

---



---

**CHAPTER 290**

**H.P. 364 - L.D. 484**

**An Act Concerning Grandparents' Rights of Visitation and Custody**

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

**Sec. 1. 19 MRSA §1002, sub-§1**, as amended by PL 1993, c. 686, §4 and affected by §13, is further amended to read:

**1. Grandparent.** "Grandparent" is the biological or adoptive parent of the child's biological or adoptive parent. "Grandparent" ~~does not include~~ includes the biological or adoptive parent of a child's biological or adoptive parent ~~who consented to adoption under section 1122 or~~ whose parental rights have been terminated pursuant to section 1114 or Title 22, chapter 1071, subchapter VI, but only until the child's adoption.

**Sec. 2. 19 MRSA §1129, sub-§5** is enacted to read:

**5. Notice to grandparents granted visitation or access.** The department shall notify the grandparents of a child when the child is placed for adoption if the department has received notice that the grandparents were granted reasonable rights of visitation or access under chapter 20 or Title 22, section 4005-B.

**Sec. 3. 22 MRSA §4005-B, sub-§1**, as enacted by PL 1993, c. 697, §1, is amended to read:

**1. Definition.** For the purposes of this section, "grandparent" means the biological or adoptive parent of the child's biological or adoptive parent. "Grandparent" ~~does not include~~ includes the parent of a child's parent ~~who consented to adoption or~~ whose parental rights have been terminated, but only until the child is placed for adoption.

**Sec. 4. 22 MRSA §4005-B, sub-§6** is enacted to read:

**6. Reasonable rights of visitation or access.** In any proceeding in which standing and intervenor status have been granted, the grandparent may request the court to grant the grandparent reasonable rights of visitation or access. When a child is placed in the prospective adoptive home and the prospective adoptive parents have signed an adoptive placement agreement, a grandparent's right to contact or have access to the child that was granted pursuant to this chapter is suspended. If the adoption is not final within 18 months of adoptive placement, then the grandparent whose rights of contact or access were suspended may resume, as a matter of right and without further court order, contact with the child in accordance with the order granting that contact or access, unless the court determines, after a hearing, that the contact is not in the child's best interest. A grandparent's rights of visitation or access terminate when the adoption is finalized pursuant to Title 19, section 1129. Nothing in this section prohibits prospective adoptive parents from independently facilitating or permitting contact between a child and a grandparent, especially when rights of contact have been previously ordered by a court.

See title page for effective date.

---



---

**CHAPTER 291**

**H.P. 911 - L.D. 1287**

**An Act to Amend the Probate Code Regarding Conservators**

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

**Sec. 1. 18-A MRSA §5-410, sub-§(d)** is enacted to read:

(d) When appointed by the court, the conservator shall inform the court as to the conservator's residence. If the residence changes, the conservator shall inform the court of that change. If the conservator is a corporation, the corporate offices are consid-